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# LAWS OF ILLINOIS

RELATING TO

## ROADS AND BRIDGES

IN

COUNTIES UNDER TOWNSHIP ORGANIZATION,

AND TO

DRAINAGE AND LEVEES.

1879.

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PUBLISHED BY AUTHORITY.

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### DRAINS, DITCHES AND LEVEES, FOR AGRICULTURAL, SANITARY AND MINING PURPOSES.

AN ACT to provide for the construction, reparation and protection of Drains, Ditches and Levees, across the lands of others, for agricultural, sanitary and mining purposes, and to provide for the organization of Drainage Districts. Approved and in force May 29, 1879.

SECTION 1. [DRAINAGE DISTRICTS.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That drainage districts may be organized and established as hereinafter provided.*

§ 2. [PETITION.] Whenever a majority of the owners of lands, within a district proposed to be organized, who shall have arrived at lawful age, and who represent one-third ( $\frac{1}{3}$ ) in area of the lands to be reclaimed or benefitted, desire to construct a drain or drains, ditch or ditches, levee or levees or other work, across the lands of others for agricultural, sanitary or mining purposes, or to maintain and keep in repair any such drain or drains, ditch or ditches, levee or levees heretofore constructed under any law of this State, such owners may file, in the county court of any county in which the greater part

of the lands to be affected by said drain or drains, ditch or ditches, levee or levees, or other work proposed to be constructed, maintained or repaired, shall lie, a petition signed by a majority of the owners of said lands, within said district, proposed to be organized as aforesaid, setting forth the proposed name of said drainage district, the necessity of the same, with a description of its or their proposed starting points, route and terminus, and a general description of the lands proposed to be affected, with the names of the owners, when known, and, if the purpose of said owners is the repair and maintenance of a ditch or ditches, levee or levees, or other work, heretofore constructed under any law of this State, said petition shall give a general description of the same, with such particulars as may be deemed important and may pray for the organization of a drainage district, by the name and boundaries proposed, and for the appointment of commissioners for the execution of such proposed work according to the provisions of this act. But that nothing in this section shall operate to prevent the organization of any drainage district entirely within one county, nor to deprive the county court of such county, of its jurisdiction of the subject matter of any petition filed in accordance with the provisions of this act. *Provided* that the lands embraced in such drainage district shall be liable for any and all damages which may be sustained by any lands lying above such drainage district, by the construction of any levee, ditch or drain in such district under this act, and the commissioners of any drainage district, composed of lands lying next below another drainage district organized entirely in one county as aforesaid, shall have power to cause the lands lying in such district, entirely within one county, to be assessed in the manner prescribed by this act for the assessment of benefits to pay all such damages to the lands lying in such lower district, and to pay any and all increased costs and expenses of constructing any levee, ditch or drain in such lower district which may be necessary to carry off waters flowing from the higher district, and such lower district shall have the power to connect its levees, ditches or drains with the levees, ditches or drains of such higher district and said higher district shall have the power to connect its levees, ditches or drains with levees, ditches or drains of such lower district.

§ 3. [NOTICE OF FILING PETITION, ETC.] Such petition being filed, the clerk of said county court shall cause three weeks notice of the presentation and filing of such petition, to be given by posting notices thereof, in at least five of the most public places in said proposed district, in which said work is to be done, and also by publishing a copy thereof at least once a week for three successive weeks in some newspaper or newspapers published in each county, from which any part of said district is proposed to be formed. Such notices shall state when and in what court said petition was and is filed, the starting point, route, termini, and general description of the proposed route, the boundaries and name of the proposed drainage district and at what term of the said court the petitioners will ask a hearing on such petition, and the certificate of said clerk or the affidavits of others affixed to a copy of said notices, shall be sufficient evidence of the posting and publication of said notices.



§ 4. [JURISDICTION OF COUNTY COURT.] The county court in which such petition shall be filed may hear the petition at any probate term, and may determine all matters pertaining thereto under this act, and may adjourn the hearing from time to time or continue the case, for the want of sufficient notice or other good cause.

§ 5. [HEARING—FINDINGS OF COURT—COMMISSIONERS.] On the hearing of any petition filed under the provisions of this chapter all parties through or upon whose land any of the proposed work may be constructed, or whose lands may be damaged or benefited thereby, may appear and contest the necessity or utility of the proposed work or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto. It shall be the duty of the court to hear and determine whether or not the said petition, contains the signatures of a majority of the owners of lands within said proposed district, who are of lawful age, and who represent one third in area of the lands proposed to be affected by such work, and the affidavit of any three or more of the signers of said petition, that they have examined said petition and are acquainted with the locality of said district, and that the said petition is signed by a majority of such owners who are of lawful age, who represent at least one-third in area of said land, to be so affected may be taken by the court as *prima facie* evidence of the facts therein stated, or the oath or affirmation before said court or the affidavit of any person, properly taken and certified by any person or court authorized to take acknowledgments of deeds to real estate in this State, giving the age of such party and his or her ownership of lands to be named in such oath, affirmation or affidavit, by proper description, shall be sufficient evidence to the court of such facts: *Provided*, that all deeds made for the purpose of establishing or defeating the prayer of said petition, not made in good faith, and for a valuable consideration shall be taken and held to be in fraud of the provisions of this act, and the holders thereof shall not be considered as owners thereof. If the court after hearing any and all competent evidence that may be offered before it for and against the said petition, shall find that the same has not been signed by a majority of the land owners as hereinbefore required, the said petition shall be dismissed at the cost of the petitioners, but if the court shall find that the petition has been signed by land owners constituting such majorities, the court shall so find, and such finding shall be conclusive upon the land owners of such district, that they have assented to and accepted the provisions of this act, and if it shall further appear to the court that the proposed drain or drains, ditch or ditches, levee or other works is, or are necessary or will be useful for the drainage of the lands proposed to be drained thereby for agricultural, sanitary or mining purposes, the court shall so find, and appoint three disinterested persons as commissioners to lay out and construct such proposed work. In case the lands to be drained or leveed shall be situated in different counties, not more than two of the commissioners shall be chosen from any such counties. If the court shall find against the petitioners, the petition shall be dismissed at the cost of the petitioners.

§ 6. [OATH.] Before entering upon the duties of their office, such commissioners shall take and subscribe an oath faithfully to discharge

the duties of their office, without favor or partiality, and to render a true account of their doings to the court, by which they are appointed, whenever required by law or by the order of the court.

§ 7. [CHAIRMAN—SECRETARY.] They shall elect one of their number chairman, and may elect one of their number as secretary.

§ 8. [QUORUM.] A majority of the commissioners shall constitute a quorum, and a concurrence of a majority of their number in any matter within their duties, shall be sufficient.

§ 9. [COMMISSIONERS TO EXAMINE LAND—REPORT.] As soon as may be after their appointment, or within such time as the court may direct, the commissioners shall examine the land of the petitioners proposed to be drained or protected, and the lands over or upon which the work is proposed to be constructed, and determine,

*First.*—Whether the starting point, route and terminus of the proposed work and the proposed location thereof, is or are in all respects proper and feasible, and if not, what is or are so.

*Second.*—The probable cost of the proposed work, including all incidental expenses, and the cost of the proceeding therefor.

*Third.*—The probable annual costs of keeping the same in repair after the work is completed.

*Fourth.*—What lands will be injured thereby, and the probable aggregate amount of all damages such lands will sustain by reason of the laying out and construction of said work.

*Fifth.*—What lands will be benefited by the construction of the proposed work, and whether the aggregate amount of benefits will equal or exceed the cost of constructing such work; including all incidental expenses, costs of proceeding and damages.

*Sixth.*—Whether the proposed district as set out in the petition filed, will embrace all the lands that may be damaged or benefited by the proposed work, and if not to report what additional lands will be so affected.

*Seventh.*—In case the prayer of the petition is for the purpose of repairing and maintaining a levee or levees, ditch or ditches, heretofore constructed under any law of this State, it shall be the duty of the commissioners to examine the said levee or levees, ditch or ditches, and the lands intended to be reclaimed thereby, and to report to the court,

*First.*—Whether, in their opinion, said levee or levees, ditch or ditches can, with proper repairs, be made sufficient to protect permanently, said lands from overflow from high water, or to drain the same.

*Second.*—The probable annual expense of keeping the same in such repair.



*Third.*—What lands will be benefited thereby, and the probable aggregate amount of such benefits.

*Fourth.*—Whether the aggregate annual amount of benefits will equal or exceed the annual costs of such repairs, including all incidental expense and costs of the proceeding, and,

*Fifth.*—Whether the proposed district will embrace all the lands that may be benefited by the maintenance of such levee, or ditch, and if not, to report what additional lands will be so affected, which report shall be filed with the clerk of said court.

§ 10. [DISMISSAL OF PROCEEDINGS.] If the commissioners shall find that such costs, expenses and damages are more than equal to the benefits, there will be bestowed upon the land to be benefited, they shall so report, and the proceedings shall be dismissed at the cost of the petitioners.

§ 11. [SURVEYS, PROFILES, ETC.] If the commissioners shall find that the proposed work, or such portion of the same as will be satisfactory to the petitioners, can be done at a cost and expense not exceeding such benefits, they shall proceed to have the proper surveys, profiles, plans and specifications thereof made, and shall report their conclusions and a copy of such surveys, profiles, plans and specifications, to the court which appointed them.

§ 12. [ALTERATION OF PLANS.] The commissioners shall not be confined to the point of commencement, route or terminus of the drains or ditches, or to the number extent or size of the same, or the location, plan or extent of any levee, ditch or other work to that proposed by the petitioners, but shall locate, design, lay out and plan the same in such manner as they shall think will drain or protect the petitioners' land with the least damage, and greatest benefit to all lands to be effected thereby, and any plans proposed by such commissioners may, on the application of any person interested, or of the commissioners, be altered upon the order of the court, in such manner as shall appear to the court to be just.

§ 13. [FILING REPORT—NOTICE OF CONFIRMATION.] Upon the report of the commissioners being filed with the clerk of the court appointing such commissioners, he shall cause notice to be given in the same manner as is provided in section three of this chapter, which notice shall state the time of filing such report, and upon what day application will be made for the confirmation of such report, at which time all persons interested, may appear and contest the confirmation thereof, or show that the same ought to be modified in any particular, and may offer any competent evidence in support thereof.

§ 14. [CONFIRMATION—REVIEW—MODIFICATION.] If upon the hearing, the court shall be of opinion that the objections are not well taken, or if no objections shall be made, it shall order the confirmation thereof. If it shall appear that the same ought to be modified, and the court shall be sufficiently informed in the premises, it shall modify the same to conform to the equities, in the premises; or if not sufficiently informed, it shall order the commissioners to review and correct their report; and may make specific directions in what respect they

shall reform their report; and the court may make all necessary orders in the premises, either for the continuance of the hearing or other lawful purpose.

§ 15. [ADJOURNMENT.] If the report be referred back to the commissioners for amendment, the court may fix a day when the commissioners shall again present their report, in which case the hearing shall stand adjourned to that day, and no further notice shall be required thereof. If no day shall be fixed for such report, the cause shall be continued to the next term of court, when it shall stand for hearing.

§ 16. [ORDER OF CONFIRMATION—JURY.] If after hearing all objections, if any, to the report of the commissioners, the court shall be satisfied that the said report should be approved, the court shall cause an order of confirmation of the same to be entered which order may be substantially as follows:

“County court of.....County.....Term A. D. 18..... In the matter of the petitions of.....and others. This day the report of.....commissioners heretofore appointed by this court to examine the lands of the petitioners for the purposes specified in the petition filed in this cause, having been filed, and it appearing to the court that due notice has been given to all persons interested, for the length of time, and in the manner required by law, of the application to this court for the confirmation of said report, and the court having duly examined said report and considered all objections to the same—it is ordered by the court that the report of said commissioners (or if said report has been modified by the court) say “*as modified by the court,*” be and the same is hereby confirmed; and the court further finds that the work proposed in said petition to be done, will be useful for agricultural, sanitary or mining purposes to the owners of lands within said proposed district, and the court also finds that the persons who have signed said petition, are of lawful age, and are a majority of the land owners, and who represents one third in area of the land to be affected by such proposed work. And the court further finds that said drainage district is duly established as provided by law.  
....., County Judge.”

And upon entering such order of record, said district is hereby declared by law to be organized as a drainage district by the name mentioned in said petition, and with the boundaries fixed by the order confirming the report of the said commissioners. And said district is hereby declared to be a body politic, and corporate by the name mentioned in said petition as aforesaid, with the right to sue and be sued, to adopt and use a corporate seal, and to have perpetual succession; and the commissioners appointed as aforesaid and their successors; in office shall, from the entry of such order of confirmation, constitute the corporate authorities of such drainage district, and shall exercise the functions conferred upon them by law. And thereupon the court shall empanel a jury of twelve men, having the qualifications of jurors in courts of record, who shall be sworn to faithfully and impartially perform the duties required of them to the best of their understanding and judgment, and to make their assessments of damages and



benefits according to law, or the court may direct that a jury be empaneled before a justice of the peace for the assessment of damages and benefits, in which case the commissioners may apply to any justice of the peace in the county, who shall immediately, without the formality of any written application, proceed to summons and empanel a jury of twelve men, having the qualifications of jurors as aforesaid, who shall be sworn in the same manner as is above provided in case of a jury empaneled by the court in which the proceeding is pending, and the justice shall enter upon his docket a minute of such proceeding before him, and the names of the jurors.

§ 17. [ASSESSMENT OF DAMAGES, ETC.] The jurors empaneled as aforesaid shall elect one of their number foreman when the proceeding is for the construction of ditches, drains, or levees, and shall proceed to examine the lands to be affected by the proposed work, and ascertain, to the best of their ability and judgment the damages and benefits which will be sustained by or will accrue to the lands to be affected by said proposed work, and shall make out an assessment roll in which shall be set down in proper columns the names of owners when known, a description of the premises affected, in words or figures or both, as shall be most convenient, the number of acres in each tract, and if damages are allowed, the amount of the same; and if benefits are assessed, the amount of the same; and in case damages are allowed to, and benefits assessed against the same tract of land the balance, if any, shall be carried forward to a separate column for damages or benefits, as the case may be. But the amount assessed for keeping said levee, or ditch in repair, shall not in the aggregate amount to a sum in any one year, greater than would be produced by thirty cents per acre on all the lands so assessed. In case the petition shall set out that a levee or ditch, has been made under any law of this State, and prays for assessment to repair and keep in repair said levee or ditch, in the future, the jury shall assess the benefits which said lands will sustain by repairing said levee, or ditch, and also the annual amount of benefits which said lands will sustain by keeping said levee, or ditch, in repair thereafter. And in such case, no other or different assessments shall be made by the jury, but in all other respects the jury shall comply with the provisions of this act, so far as the same, may be applicable thereto.

§ 18. [BENEFITS.] In making such assessment, the jury shall award and assess the damages and benefits in favor of and against each tract separately, in the proportion in which such tract of land will be damaged or benefited; and in no case shall any tract of land be assessed for benefits in a greater amount than its proportionate share of the estimated cost of the work and expenses of the proceeding, nor in a greater amount than it will be benefited by the proposed work, according to the best judgment of the jury.

§ 19. [CORRECTION OF ASSESSMENT AND NOTICE.] When the jury shall have completed their assessment of damages and benefits, they shall fix a time and place, when and where they will attend, in case the jury was empaneled by the court in which the petition was filed, before the same court at some regular term thereafter, or if the jury

was empaneled by some justice of the peace, then before the same justice, if still in office, and if not before his successor or any other justice they may select for the correction of their assessment, and the commissioners or the jury shall give at least ten days notice of such time and place, and object of such meeting, by posting and publishing notices as required in section three of this chapter, prior to the time so fixed. The affidavit of any creditable person or persons, that he or they has or have posted such notices as herein required, and the certificate of the publishers of such newspaper, as to such publication shall be sufficient evidence of such facts.

§ 20. [HEARING OBJECTIONS.] The jury shall appear at the time and place appointed, and shall hear all objections that may be there and then made by the owners of any lands which may be allowed damages or assessed for benefits, or by the commissioners, to the allowance of damages to, or assessments of benefits against any tract of land, and shall make such corrections as shall seem to them just, and shall adjust such assessment so as to make the same just and equitable.

§ 21. [PROCEEDINGS ON HEARING.] At such hearing, if in the county court the court may compel the attendance of witnesses, and in case any juror empaneled, shall fail to appear, may attach him for contempt or may empanel another in his stead, and may at any time during the proceedings in considering or making their assessment, empanel one or more jurors in the place of any juror who may fail from any cause or refusal to act, and administer to such jurors the oath required in section sixteen (16) of this act. And if such hearing shall be before the justice of the peace he shall preside and enforce order as in other cases before justices of the peace and shall have like power as in this section conferred upon the county courts.

§ 22. [CONFIRMATION OF ASSESSMENT.] If no objection shall be made to the assessment at the time and place appointed to hear objections, or when found correct, or when corrected upon hearing, the jury shall confirm such assessment, which shall be certified by the foreman of the jury and delivered to the commissioners, who shall return the same to that court in which the said petition has been filed, within ten days from such confirmation, and the same shall stand for hearing at the next term thereafter, if the same has been filed ten days before such term; or for good cause may be continued; but if not filed ten days before such term, shall stand continued to the next term.

§ 23. [APPEAL BOND.] The commissioners, or any person who shall have made objections to such assessment may appeal from the finding of the jury, to the court in which the assessment is returned within ten days after the same shall be filed in said court, by filing with the clerk of said court his or their bond, payable to the opposite party, with such security, and in such amount, as shall be approved by the clerk, conditioned to pay all costs that may accrue by reason of such appeal, and if the appeal is by an owner of land assessed for benefits, to pay such an amount as may be found against him on account of benefits to his land by reason of such work.



§ 24. [TRIAL ON APPEAL.] The trial upon appeal may be in the same manner as other appeals from justices of the peace, and in case the assessment of damages or benefits shall be changed from that returned to the court, the court shall cause the assessment roll to be amended to conform thereto.

§ 25. [APPEAL ETC., FROM COUNTY COURT.] When the assessment roll shall have been corrected as aforesaid, or in case no correction shall be required to be made, the court shall confirm the same and cause it to be spread upon the records, and appeals or writs of error shall be allowed therefrom, as in cases of appeals from and writs of error to the county courts in proceedings for the sale of lands for taxes or special assessments, and provided that the granting of an appeal in one or more cases or to one or more persons shall not operate to defer the confirmation of said report in other cases, but the courts may proceed to confirm said reports as to all lands where no appeal is taken, and in all appeals taken from the confirmation made by the county court, if the judgment of the county court shall be affirmed, or if upon such cause being remanded for a new trial, the judgment of said court shall be in favor of said commissioners, the county court shall order the judgment so rendered to be made a part of said confirmed report, and the assessments of benefits or damages so found shall be extended on said report and the same shall become a part thereof.

§ 26. [PAYMENTS OF BENEFITS IN INSTALLMENTS.] At the time of confirming such assessment, it shall be competent for the court to order the assessment of benefits to be paid in installments of such amounts, and at such times as will be convenient for the accomplishment of the proposed work; otherwise the whole amount of such assessment shall be payable immediately upon such confirmation, and shall be a lien upon the lands assessed, until paid. But in cases where a levee or ditch, has been heretofore built under any law of this State, or may be hereafter built under the provisions of this act, the annual assessments for keeping the same in repair, shall be due and payable on the 1st day of September, annually, and shall be a lien on the lands upon which said assessments are made, from and after the confirmation of the report. The court in which such proceedings are had shall require from said commissioners a report of the condition of the levee or ditch at its July term, of each year, together with their estimate of the amount necessary to keep the levee or ditch in repair and pay all incidental and necessary expenses for the ensuing year, and if the court shall find that a less amount will be required for such ensuing year, than the whole amount of the assessment for that year, then the court shall, by an order, fix the amount to be paid for such year, and only that amount shall be collected, and the excess of such assessment over and above the amount so fixed by said order for said year, shall be remitted by law, and shall not thereafter be collected. *Provided*, the amount to be collected under the order of said court, shall not, in the aggregate, amount in any one year to a sum greater than would be produced by a levy of 30 cents per, acre on all the lands within said district.

§ 27. [CERTIFIED COPY OF ASSESSMENT DELIVERED TO COMMISSIONERS.] Immediately after the entry of such confirmation by the court, the

clerk shall make out and certify to the commissioners a copy of such assessment roll, and shall so make out and deliver to the commissioners separate copies of the same, pertaining to the lands situated in the different counties, which shall be recorded in the recorders office of the respective counties, in which the lands are situated, and shall be notice of the lien thereof to all persons.

§ 28. [POWER OF COMMISSIONERS TO CONTRACT.] Upon the organization of said drainage district the commissioners so appointed, shall from thenceforth, have power to contract and be contracted with, sue and be sued, plead and be impleaded, and to do and perform, in the corporate name of said district, all such acts and things as may be necessary for the accomplishment of the purposes of this act.

§ 29. [TREASURER—BOND.] The commissioners shall, after the confirmation of said assessment roll and before any collections shall have been made by them, appoint a treasurer who shall not be one of their number, who shall execute a bond to the people of the State of Illinois for the use of all persons interested, in a sum of not less than twice the amount of assessments that may be levied for one year, with such sureties as may be approved of by the judge of said court, conditioned for the faithful performance of his duties as treasurer of said drainage district, and that he will safely and faithfully account for all money that by virtue of his said office, shall come to his hands. Which said bond when approved by the court shall be kept and preserved by said commissioners, and suits may be maintained upon the same by them upon any breach of its conditions.

§ 30. [DUTIES—TERM OF OFFICE.] It shall be the duty of said treasurer to keep proper books to be furnished him by the commissioners, in which he shall keep an accurate account of all moneys received by him, and of all disbursements of the same; he shall pay out no money, except upon the order of a majority of the commissioners, and shall carefully preserve on file all orders for the payment of money given him by the commissioners, and shall turn over all books, papers, vouchers, moneys, and other property belonging to and in his hands, as such treasurer, to his successor in office. His term of office shall be two years, but he may be at any time removed by the court upon petition of a majority of the commissioners, or for good cause shown.

§ 31. [INTEREST ON INSTALLMENTS.] In case the assessments for benefits shall be payable in installments, such installments, shall draw interest at the rate of 8 per cent, per annum, from the time they shall become payable till they are paid, and such interest may be collected and enforced as part of the assessment.

§ 32. [BOND OF COMMISSIONERS.] The Commissioners appointed by virtue of this chapter shall not collect or receive any money for the purposes therein specified, until they shall have given bond payable to the people of the State of Illinois, for the use of all persons interested, in a sum not less than twice the amount of the assessment for benefits, payable in any one year, with such security as shall be approved by the Judge of the Court, conditioned for the faithful application of all moneys that may be received by them as such Commissioners, and



to make due account thereof to the Court whenever required, which bond shall be filed in the Court in which the proceedings are had. The Court may require additional bond from time to time, or the Commissioners may if they choose appoint one of their number collector of assessments, who before entering upon the collection of such assessments shall give bond as in this section mentioned, and who after giving such bond may make such collections and give receipts for the same; and all money that may come to the hands of said Commissioners or their said collector, shall at once be paid over to their treasurer, and disbursements shall be made by order of the Commissioners, drawn upon their said treasurer, in no other manner.

§ 33. [NOTICE OF ASSESSMENT.] The Commissioners upon receiving such certified copy of such assessment roll, shall immediately cause a notice to be published for three weeks in the manner required in section three (3) of this act, in substance as follows:

Notice of Drainage Assessment.—Notice is hereby given to all persons interested, that an assessment is now due for drainage purposes for the year A. D. 18...., upon lands lying within the..... drainage district, in the county of....., and State of Illinois, and that the same must be paid to the undersigned commissioners of said drainage district on or before the.....day of....., A. D. 18.., and that in default of such payment, the several tracts of lands upon which such assessments remain unpaid, will be sold according to law to pay the amount of such assessments and costs.

.....  
Commissioners of Drainage District.

§ 34. [DELINQUENT ASSESSMENTS—RETURN—SALE.] If the assessment due upon said lands shall not be paid on or before the day named in the notice given as in section 33 of this act, it shall be the duty of said commissioners, if they have not appointed a collector as aforesaid, and if so, then of said collector to make out a certified list of such delinquent lands upon which the assessments remain unpaid, and the same shall be by him or them, on or before the tenth (10th) day of March next after the same have become payable, returned to the county collector of the county or counties in which such lands shall lie, and when the same shall lie in different counties, a separate return shall be made for each county of the delinquent lands therein, and it shall be the duty of the collector to whom any such return has been made to transfer the amounts thereof from such returns to the tax books in his hands, setting down therein opposite the respective tracts or lots, in proper columns prepared for that purpose, the amount assessed against each lot, and the like proceeding shall be had and with the like force and effect in the collection of such delinquent assessments, and the sale of said lands for non-payment thereof, as in ordinary collections of State and county taxes by county collectors, and of sales of real estate by them for such non-payment and of redemptions from such sales.

§ 35. [PAYMENT BEFORE SALE.] Notwithstanding the returns of such delinquent list the said commissioners or their collector, shall be authorized to receive payment of any such delinquent assessments and

costs, and may give receipts for the same, but shall keep a memorandum of the same, and on or before the day of sales fixed by said county collector for the sale of such lands, shall present said memorandum or list, to said county collector or collectors, for the purpose of having the same checked or marked paid on the delinquent list in his hands, and all amounts collected by the said county collector, by sales or otherwise, after deduction of his fees, shall be paid to the commissioners on demand.

§ 36. [LETTING CONTRACTS—ADVERTISING FOR BIDS.] The commissioners, when qualified in pursuance of this act, may do any and all acts that may be necessary in and about the surveying, laying out, constructing, repairing, altering, enlarging, cleaning, protecting and maintaining any drain, ditch, levee or other work for which they shall have been appointed, including all necessary bridges, crossings, embankments, protections, dams, and side drains, clearing out and removing of obstructions from natural or artificial channels or streams within or beyond the limits of the drainage district, procuring or purchasing riparian rights and water powers, by agreement with the owners thereof, and may use any money in their hands arising from assessments for that purpose: *Provided*, that in all cases where the work to be done is the construction of the principal work, the cost of which will exceed five hundred dollars, the same shall be let to the lowest responsible bidder, and the said commissioners shall advertise for sealed bids by notice published in some newspaper issued in the county in which the petition is filed, and if there be no newspaper issued or published in said county, then in the next nearest newspaper; which said notice shall particularly set out the time and place, when and where, the said sealed bids will be opened; the kind of work to be let, and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and may reserve the right to reject any and all bids. And said commissioners shall not, during their term of office, be interested directly or indirectly in any contract for the construction of any ditch, drain or levee, in such drainage district, nor in the wages of or supplies to men or teams employed on any such work in said district. *Provided, further*, that no levee, drain, ditch, or other work authorized to be constructed or made, under this act, shall be constructed or made in such a manner, as to destroy or impair the usefulness or prevent the public use of any bay or harbor, or body of water used as a harbor, connected with any navigable stream.

§ 37. [SUITS, ETC.—PAYMENT OF EXPENSES.] Said commissioners may use money arising from the collections of assessments, for the purpose of compromising suits and controversies arising under this act, and in the employment of all necessary agents, and attorneys, in the prosecution or defense of said operations. *Provided*, that said commissioners shall only use money under the provisions of this section, by the direction and approval of the county court.

§ 38. [POWER TO BORROW MONEY.] The commissioners may borrow money not exceeding in amount, the amount of assessment unpaid at the time of borrowing, for the construction of any work which they



shall be authorized to construct, and may secure the same by notes or bonds bearing interest at the rate not exceeding six per cent, per annum, and not running beyond one year after the last assessment on account of which the money is borrowed, shall fall due, which notes or bonds shall not be held to make the commissioners personally liable for the money borrowed, but shall constitute a lien upon the assessment for the re-payment of the principal and interest thereof.

§ 39. [PAYMENT OF DAMAGES.] All damages over and above the benefits to any tract of land, shall be payable out of the amounts assessed against other lands for benefits, and shall be paid or tendered to the owners thereof, before the Commissioners shall be authorized to enter upon his land for the construction of any work thereupon. In case the owner is unknown, or there shall be a contest in regard to the ownership of the land or, the Commissioners cannot, for any reason, safely pay the same to the owner, they may deposit the same with the Clerk of the Court, and the Court may order the payment thereof to such party as shall appear to be entitled to the same.

§ 40. [REMOVAL OF COMMISSIONER--FILLING VACANCY.] The Court may, at any time, remove any Commissioner appointed by it, and appoint another in his place, and may fill all vacancies caused by death, resignation, removal or otherwise, and may appoint a new commissioner, or authorize the Commissioners appointed to repair or cleanse any work, ditch or drain, that shall have been constructed.

§ 41. [REPORT OF COMMISSIONERS.] The commissioners shall, as often as once in each year after their appointment, and as much oftener as the court shall require, make a report to the court by which they were appointed, showing the amount of money by them collected, and the manner in which the same is being done.

§ 42. [PAY OF COMMISSIONERS.] The Commissioners shall receive for their services the sum of two dollars per day, for each day they shall be actually engaged in the business of their appointments, such amount to be audited at least once a year by said county court, and certified to by said court to their treasurer, to be paid by him. They shall fix the compensation of said treasurer, and of all other servants and agents; and the clerk of the county court shall receive for his services hereunder, such fees as are by law allowed for similar services in that court.

§ 43. [PETITION TO BE RELIEVED OF ASSESSMENT.] Whenever a petition shall be presented to said court by the owners of any tract of land within said district, setting forth that the same or any part thereof, has been erroneously assessed for benefits, for the reason that the same is not subject to overflow, or has never been overflowed by the highest waters known, and praying that the said lands in whole or part may be released from the assessments made, or to be made in future, the court may after ten days notice of the filing of such petition being given to the commissioners, at any term of said court, proceed to hear said application, granting such continuances as may be right and proper, and if the court shall find upon issue joined, that any part of the land named in said petition, has never been overflowed

by the highest water known from the stream against which the levee in question has been constructed, may by order to be entered of record, amend the assessment roll returned by the jury in conformity to the facts found, and such part shall thereafter be discharged from all other assessments, and the clerk shall immediately cause a copy of such order to be delivered to the commissioners, that the copy of the assessment roll in their hands, may be made to conform to such order—*Provided*, That said petition shall be filed within one year after the confirmation of the assessment and not thereafter.

§ 44. [ENTRY UPON LANDS.] The commissioners from the time of their appointment may go upon the lands lying within said district for the purpose of examining the same, and making plans, plats and surveys, and after the organization of said district, and payment or tender of compensation allowed, may go upon said lands, with their servants, teams, tools, instruments or other equipments, for the purpose of constructing such proposed work, and may forever thereafter enter upon said lands as aforesaid, for the purpose of maintaining or repairing such proposed work, doing no more damage than the necessity of the occasion may require; and the like license and authority is hereby given to the commissioners of highways in all cases, where they may be authorized to perform similar duties under this act.

§ 45. [ASSESSMENT BOOK.] When an assessment has been made as provided in the preceeding sections, and annually thereafter, it shall be the duty of the commissioners to provide suitable books, with proper headings and columns, in which shall be inserted, according to township and range the several tracts of lands against which assessments are to be carried out, the names of the owners, if known, the number of acres to be assessed, the total amounts of assessments, and for what year, and a column for payments, and if any assessments shall remain due and unpaid after the time mentioned in the notices to be given as provided in section 33 of this act, it shall be the duty of said commissioners, or of the persons appointed by them collector as aforesaid, to make a list of the lands upon which such assessment has not been paid, and deliver such list or lists to the county collector of each county, in which such lands may respectively lie, to be by him collected as heretofore provided.

§ 46. [JURISDICTION OF JUSTICES OF THE PEACE.] When the cost of any proposed drain, ditch, levee or other work authorized by this chapter to be done will not exceed the sum of five thousand dollars, and will not extend through or into more than three congressional townships, the petition may if the petitioners shall so elect, be filed with a justice of the peace in the county where the land to be affected, or the major part thereof, is situated; and all the proceedings authorized by this chapter to be had in the county court, in cases where the petition is filed in such court may be had before such justice of the peace, and the assessment of damages and benefits, shall be conducted before such justice in the same manner, as near as may be, as in cases commenced by petition before such county court. And appeals may be taken from the final judgment of the justice of the peace to the county court within the same time, and in the same manner



as appeals may be taken from the findings of the jury in cases commenced in the county court, and the assessment of benefits may be collected and enforced as in such cases before the county court.

§ 47. [PROCEEDINGS BEFORE JUSTICE.] When the proceedings shall be had before a justice of the peace, the justice shall direct the commissioner of highways of the town or township, or in case the drain, ditch or other work shall be located in several towns or townships, the commissioners of the several townships, as a joint board, or at the election of the petitioners the justice of the peace may appoint one or more commissioners, not exceeding three, to lay out and construct such work, and perform the duties required of commissioners appointed under this chapter; and such commissioners of highways, or commissioner or commissioners so appointed as aforesaid, shall have all the power and authority and may perform all acts and shall discharge all the duties imposed upon or required of commissioners appointed by the county court; and the said commissioner or commissioners, so appointed by the justice of the peace as aforesaid, shall receive for their services, the same compensation as is herein provided to be paid to commissioners appointed by the county court.

§ 48. [REFUSAL, ETC., TO PERFORM DUTY.] If any commissioner of highways shall refuse or neglect to discharge any of the duties imposed upon him, by virtue of this act, he shall, for every such refusal or neglect, be liable to any party aggrieved, for all damages sustained by him, and upon conviction, may be fined in any sum not exceeding one hundred dollars, and be removed from his office.

§ 49. [NO SECOND TAX—ALLOWANCE FOR PRIVATE DRAINS, ETC.—ASSESSMENT AGAINST RAILROADS, ETC.] When a ditch or drain has been located under the provisions of this act, of sufficient capacity to carry off the water that flows to it, and also to properly drain the land taxed for the construction of the same, such lands shall not be again taxed or assessed for the benefit of improving any lands lying above the lands taxed for the construction thereof; and in all cases where any such ditch empties into any lower ditch above described, for the benefit of lands lying above the lower ditch, the commissioners under the direction of the court, shall levy a sufficient tax on such land benefited by the new ditch, to enlarge such lower ditch so as to confine the water to the same level that it originally had before an additional amount of water emptied into such lower ditch, for the benefit of lands lying above the lower ditch. Whenever it shall appear to the jury that a drain, ditch, levee or other work has been in whole or in part constructed by voluntary effort of the owners thereof, for the purpose of draining or protecting any land to be affected by the work proposed under this act, and said work shall be found to be of benefit to such lands, and that any of the lands to be benefited by the said work, have borne any part of the expense of such work so voluntarily done, the jury may allow to the owners of such land, and deduct from the assessment which they may make against the same, the amount of the expense of such work so borne by such lands, or such part thereof as will make an equality of burdens and benefits, as between the several owners of lands benefited. When a ditch, drain or levee

established under this act, drains or levees either in whole or in part, any public or corporate road or railroad so as to benefit any of such roads, so that the road bed or traveled track of such road will be improved by the construction of said ditch, drain or levee, the commissioners shall apportion to the county, state, or free turnpike road to the township—if a township road—to the company if a corporate road or railroad such portions of the cost and expenses thereof, as to private individuals, and require them to pay such cost and perform such labor in like manner as individuals, and in case there is a disagreement of such assessments the same must be determined by the courts as in other cases.

§ 50. [COMMISSIONERS OF HIGHWAYS TO ACT.] The commissioners of highways shall have power to locate and establish drains to be constructed and maintained at the cost of parties petitioning therefor, as hereinafter provided, and for the purpose aforesaid, said commissioners shall be ex-officio drainage commissioners within their respective districts, but in all their proceedings hereunder, they may act by their official title, "Commissioner of Highways."

§ 51. [PRIVATE DRAIN—PETITION TO CROSS ADJOINING LAND.] Whenever the owner or owners of any lands or lots at his or their own cost, shall desire to locate and construct a drain leading from lands or lots owned by them severally or jointly, or shall desire permanently to establish any drain, which may have been heretofore located and constructed, or which may hereafter be located and constructed, and which said drain or drains, so desired to be located or established, shall lead across or upon the land of another person or persons, and such owner or owners so desiring to construct or establish such drain, cannot obtain the consent of the owner or owners of said land, across or upon which drain is sought to be located, or, if already constructed, sought to be established as a permanent drain to the location and construction, or establishment of such drain, such owner or owners may petition the commissioners of highways of the town, in writing, which said petition shall set forth a description of the premises, or land or lands, across or upon which said drain is proposed to be located or established, the names of the owners, if known, of the lands, and if not known, it shall be so stated, across or upon which said drain is to pass or does pass, the points at or near which it is to commence or enter upon said lands, or does so enter or commence, its general course and distance, and the place at or near which it is to terminate on, or pass from said lands, or does so terminate or pass from said lands. Said petition shall also set forth whether said drain is to be constructed or established as an open ditch or a covered boxed or tile drain. If an open ditch, the width shall be specified.

§ 52. [NOTICE OF HEARING PETITION.] Whenever the Commissioners of Highways shall receive any such petition, they shall fix upon a time when and where they will meet to examine the location and route of such drain, and to hear reasons for or against the location, construction or establishment of the same, and they shall give at least ten days notice of the time and place of such meeting by



posting up notices thereof, in three of the most public places in the vicinity of said drain, so proposed to be located or established. If there shall be an occupant residing upon the land, such occupant shall have notice thereof by leaving a copy of such notice at his place of residence, with such occupant or any member of his family, at least three days before the time of said meeting.

§ 53. [HEARING—PROOF OF NOTICE.] The commissioners, or any of them who may meet, may, by public announcement, and by the posting of a notice at the time and place named for the first meeting, adjourn the meeting from time to time, but not for a longer period than ten days in all; and shall, at such first or such adjourned meeting within ten days, the notices, herein required, having been given, and all reasons for and against the said drain having been heard and considered, decide and publicly announce whether they will grant or refuse the prayer of the petitioner, and shall indorse upon or annex to the petition a brief memorandum of such decision, to be signed by the commissioners; and they shall file the said petition with their determination thereon, in the office of the town clerk within five days thereafter; the posting of any notice required by this act may be proved by the affidavit of the person posting the same, or by other legal evidence.

§ 54. [POWER OF COMMISSIONERS OF HEARING—REPORT.] The commissioners, in considering their action, under said petition, shall consider whether any change of the beginning point, route or terminus of said drain, across or upon the lands aforesaid, and viewed by them, or change of the construction thereof, from an open to a covered drain, or the reverse, would be preferable to that prayed for in the petition, and if they decide that such change would be preferable, and would be for the advantage of the parties interested, they shall have power to make such alterations, either in the location, route or terminus of said drain, or of the mode of its construction, or width thereof, and if they decide to grant the prayer of the petitioners for the drain, as they may so alter or change the same, they shall specify either on the back of said petition or some paper to be annexed thereto and signed by them, what alterations or changes they have made in the location, route, width or mode of constructing said drain, and that as altered and changed by them, they have located or established, as the case may be, the said drain, and return their determination and decision as provided in the preceeding section. Whether said drain be approved as prayed, or be approved as changed, by the commissioners, they shall accompany their report and order touching the same, with a survey and plat thereof as approved and located. The return so made shall be held to be an order locating or establishing the said drain, and, with the petitions thereon, shall be recorded by the town clerk, and the record so made shall be evidence thereafter that all preliminary requirements thereto were duly performed.

§ 55. [PROCEEDINGS TO PROCURE RIGHT OF WAY.] If the petitioner or petitioners shall desire to construct or establish the drain as finally approved of and decided by the said highway commissioners, and shall be unable to obtain the consent of the owner or owners of the land

across or upon which said drain may have been located, as established as aforesaid, to the location and establishment thereof as approved by said commissioners of highways, and shall be unable to obtain a release of damages by reason of the location and construction thereof, or to agree with said owner in respect of the damages, such petitioner or petitioners may, at any time within twelve months from the time of filing the determination of the highway commissioners in the town clerks office, file with any justice of the peace of the township in which such lands are situated, a copy of the record from the town clerks office, containing the petition for such drain, and the decision of the highway commissioners thereon, and shall also file an affidavit setting forth the name or names of the owner or owners of the lands, if known, and if unknown stating the fact, across or upon which said drain is to be located or established, and stating whether said owner or owners or any of them, and which of them, are residents of the county, if known to be such residents.

§ 56. [JURY TO ASSESS DAMAGES—SUMMONS, ETC., TO OWNER.] Upon the filing of such affidavit and copy of record as aforesaid, it shall be the duty of said justice to issue a summons for a jury, to any constable of said county directing him to summons twelve men, having the qualifications of jurors, to appear before him at such time and place as may be designated, to assess, the damages, if any, which the owner or owners of the land will sustain, describing the land upon or across which said drain is located, by reason of the location and construction, or the establishment of a drain thereon, as determined by the highway commissioners of said town, and said summons shall also contain a clause directing the constable to summon such person or persons as are named in said affidavit as resident owners in the county, to appear at the time and place aforesaid. Such summons shall be served by the constable upon the person or persons named as owners in said affidavit, at least three days before the time of trial fixed therein; if it shall appear that any of said owners are unknown or non-resident, said justice of the peace shall, at the same time, make out a general notice, in writing, addressed to all persons interested, which shall set forth that the commissioners of highways of said town have located or established, as the case may be, a drain upon the lands, describing the lands, and that the damages, if any, occasioned thereby, to the owner or owners of said lands, will be assessed by a jury before said justice of the peace, at the time and place fixed by said justice in the summons, naming the time and place, when and where any owner of said land, or person interested therein, can attend and make defense therein. Three copies of the notice aforesaid shall be delivered by the justice to the constable to whom the summons aforesaid shall have been delivered, and the copies aforesaid shall be posted by the constable, in three of the most public places in the neighborhood of said drain.

§ 57. [RETURN BY CONSTABLE—CONTINUANCE.] The said constable at the time he makes return of the summons so delivered to him, shall also return the original of the notice delivered to him, by the Justice, of which, copies were to be posted as directed and shall make a return thereon, certifying when and where said notices were posted by



him; and unless it shall appear therefrom that said notices were posted for at least five (5) days before the time fixed for said trial, said Justice shall continue the trial until five (5) days shall have elapsed from the posting of said notices, and the justice shall make an order continuing the case. If it shall appear by the return of the Constable, on the day of trial, that all resident owners have been served as required, and there shall appear to be no unknown or non-resident owners, or if there be unknown or non-resident owners and it shall, by the return of the Constable appear that they have been notified as required by the posting of notices as required, then the Justice shall empanel a jury who shall proceed to assess the damages, if any, to the owners, occasioned by such drain. But unless such summons shall have been served as required, or said notices shall have been posted as required, in case there be non-residents or unknown owners, then said Justice shall continue the case to a future day fixed, of which the owners respectively, so required to be notified, shall have notice in the manner before required, and said justice, for any good reason, may continue said cause from time to time until there shall have been a final trial and verdict in the cause.

§ 58. [TRIAL—VERDICT.] At the time fixed by the justice for the trial of said cause, either originally or at any adjournment of said trial, if it shall appear that the owners have been notified or summoned, as required herein, the justice shall empanel a jury, who shall be sworn or affirmed by such justice, faithfully and impartially to assess the damage occasioned the owner or owners of said land or lands, by reason of the drain aforesaid, over and above benefits to the owner or owners thereof, according to their best judgment and understanding. The jury in considering of the damages, shall also take into consideration any benefits directly resulting to such owners, whose damages are to be assessed from the construction or establishment of such drain. If they find such benefits equal to or exceeding the damages, they shall return their verdict accordingly. If they find the damages exceed the benefits, they shall return as their verdict of damages the amount of such excess only as damages.

§ 59. [WITNESSES—JURY MAY VISIT LAND—COSTS.] All parties in interest may appear before such justice and jury, and have process of subpoena to summon witnesses, and said jury shall hear such lawful evidence touching the question of said damages as may be presented to them, and at the request of the owner or owners of the land, or of the petitioner or petitioners for said drain, shall visit and examine the proposed drain, and the lands to be affected thereby; and they shall make a written verdict specifying what damages, if any, the owner, or each owner, as the case may be, shall recover and return the same to the justice, to be by him entered on his docket in the nature of a judgment, to be paid by such petitioner or petitioners, together with all costs of suit, before said petitioners shall enter upon the construction of said drain, or, in the case of an existing drain, before any right in said drain shall be considered as established. The costs of said proceeding shall be paid by the petitioners and an execution may issue therefor; but the justice shall not tax as costs against the petitioners, the costs of witnesses, or the costs of their service by the

officer, when he shall deem their testimony to have been unnecessary. The party making such unnecessary costs shall pay the same; and a fee bill may be issued by such justice to collect the same.

§ 60. [APPEAL—BOND.] Either party to said proceedings, may appeal from the verdict and judgment so rendered, to the county court within twenty (20) days thereafter, upon giving bond and security to the opposite party to be approved by the justice, in a penalty sufficient to cover all costs, and which shall be conditioned to pay all costs of said appeal in the county court in case of the affirmance of said verdict and judgment in said court, or the dismissal of said appeal. The practice in regard to such appeals shall be the same as in ordinary cases of appeal from justices to the circuit or county court. The judgments of the court on the trial or dismissal of said appeal, shall have the same force and effect as judgments in other cases.

§ 61. [PROCEEDINGS ON APPEAL.] If said appeal shall be dismissed, or if upon the trial thereof the verdict and judgment before the justice shall be affirmed, the party appealing shall pay all costs of said appeal, but if upon the trial of said appeal the verdict and judgment before the justice should not be sustained, the party appealing shall recover the costs of said appeal. *Provided however* that in case of the partial reversal only of the verdict and judgment below, the court shall have power to apportion the costs of the appeal between the the parties and to direct how the said costs shall be taxed.

§ 62. [RIGHTS ESTABLISHED.] The petitioner or petitioners upon payment of the damages, as finally assessed, and of such costs, as he or they may be required to pay, or if no damages shall be assessed, then upon payment of such costs only as he or they may be required to pay, shall have the right to construct and maintain, or maintain, as the case may be, the drain as located by the highway commissioners, upon or across the lands specified, and shall have right of entry upon said lands for the purpose aforesaid, and the right in perpetuity thereafter, to enter upon said lands at all proper times and seasons, for the purpose of repairing, cleansing, opening or deepening the said drain, doing as little damage to the owner or owners as practicable, and the rights aforesaid, and to the maintenance of the easement of said drain, shall pass to the heirs and assigns of such petitioner or petitioners, who may successively become the owner or owners of the land or lands, for the benefit or drainage of which said drain may have been constructed or established, as the case may be.

#### IN COUNTIES NOT UNDER TOWNSHIP ORGANIZATION.

§ 63. [JURISDICTION OF COUNTY COURTS.] In counties not under township organization, the county courts shall have jurisdiction and power to locate and establish drains, which are to be constructed at the cost of the parties petitioning for the same.

§ 64. [PETITIONS, ETC.] The proceedings on the part of owners of lands or lots desiring to locate and construct, or to establish any drain already constructed upon or across the lands of others, with respect to the petitioning and giving notice, shall be the same as in counties under township organization, except that the petition shall be addressed to the county judge.



§ 65. [COURT TO APPOINT VIEWERS—REPORT—HEARING OBJECTIONS.] When the petition shall be presented to the county judge, with proof of notice having been given, or served, as required in cases arising under township organization, if the county judge, after hearing objections to such petition, if any, shall think objections to said petition untenable, he shall appoint three disinterested freeholders to view the ground, location and route of said proposed or existing drain, and if said viewers, or a majority of them, shall be of opinion that the prayer of said petitioner or petitioners should be granted, they shall cause a plat and survey thereof to be made by a competent surveyor, who shall report such survey and plat, giving, courses and distances, and specifying the land across or upon which said drain is located or established. The viewers so appointed shall have the same right to change, alter the beginning point, route, terminus, or mode of construction of said drain, as is provided in the case of highway commissioners, when acting on similar petitions and they shall cause the plat and survey thereof in case of change to be made as so altered. The report of the viewers as finally approved by them shall be filed in the office of the county clerk, and upon the filing of the same the court shall make an order of record, fixing a day, not less than ten nor more than twenty days from the filing of such report, when it will hear all objections to said report. On the day fixed for hearing objections, if any objections are made, the Court shall hear the same, and shall hear all admissible testimony in regard thereto. The Court may, for any good reason, continue or adjourn the said cause to a future day to be fixed by its order, and if upon the final hearing, said Court shall be of opinion that said drain is beneficial to the party or parties petitioning for the same, and can be constructed or established without greatly damaging the owner or owners of lands across or upon which the same is located, it shall make an order establishing the same: *Provided*, that if any owner or owners of land across or upon which said drain is located or established, shall not release the damages arising from the construction or establishment of such drain, the same shall not be constructed or held as established until the damages as to such owner shall have been ascertained by a jury as provided in proceedings to ascertain damages in similar cases in counties under township organization, by this act; except that the jury in such cases shall be empaneled in the County Court. When such damages are paid, or are released by the owner or owners or by the party or parties desiring such drain, or in case no damages are found they shall have all the rights secured to parties petitioning in similar cases, in counties under township organization.

§ 66. [PENALTY FOR INJURING, ETC., ANY DRAIN.] Any person who shall wrongfully and purposely fill up, cut, injure, destroy, or in any manner impair the usefulness of any drain, ditch or other work, constructed under this chapter, or heretofore constructed under any law of this State, or that may have been heretofore or may hereafter be voluntarily constructed for the purposes of drainage or protection against overflow, may be fined in any sum not exceeding two hundred dollars, to be recovered before a justice of the peace in the proper county, or if the injury be to any levee whereby lands shall be overflowed, he may, on conviction in any court of competent jurisdiction

be fined in any sum not exceeding five thousand dollars; and shall be deemed guilty of a felony and imprisoned in the State penitentiary for a term of not less than one, nor more than five years, at the discretion of the court. All complaints under this section shall be in the name of the people of the State of Illinois, and all fines, when collected, shall be paid over to the proper Commissioners, to be used for the work so injured.

§ 67. [LIABLE FOR DAMAGES.] In addition to the penalties provided in the preceding section, the person so wrongfully and purposely filling up, cutting, injuring, destroying or impairing the usefulness, of any such drain, ditch, levee or other work, by obstructing or filling up of any natural stream, or outlet, within or beyond the drainage district, shall be liable to the commissioners having charge thereof, for all damages occasioned to such work, and to the owners and occupants of land for all damages that may result to them by such wrongful act, which may be recovered before a justice of the peace, if within his jurisdiction, or before any court of competent jurisdiction.

§ 68. [ACT CONSTRUED.] This act shall not be construed to repeal or interfere with any other law on the subject of drainage passed by this or any subsequent General Assembly.

§ 69. [REPEAL.] The following acts are hereby repealed: "An act to provide for the construction and protection of drains, ditches, levees and other works," approved April 24, 1871; "An act to provide for the registration of drainage and levee bonds and to secure the payment of the same," approved April 9, 1872. But the repeal of said acts shall not affect any suits that may be pending or any rights that may have accrued at the time this act shall take effect.

§ 70. [EMERGENCY.] WHEREAS, there is no law now in force, providing for the construction of drains, ditches and levees, by special assessment, therefore an emergency exists, and this act shall be in force from and after its passage.

APPROVED May 29th, 1879.



## CONSTRUCTION, MAINTENANCE AND REPAIRS OF DRAINS AND DITCHES BY SPECIAL ASSESSMENT.

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## CONSTRUCTION, MAINTENANCE AND REPAIR OF DRAINS AND DITCHES BY SPECIAL ASSESSMENT.

*AN ACT to provide for the organization of Drainage Districts and to provide for the construction, maintenance and repair of drains, and ditches, by special assessments on the property benefited thereby. Approved May 29, 1879. In force July 1, 1879.*

SECTION 1. [DRAINAGE COMMISSIONERS.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the Commissioners of Highways in every township in the several counties under township organization, in this State, shall be the Drainage Commissioners in and for their respective townships and as such shall be a body politic and corporate, and be the corporate authorities of all drainage districts within their townships, may sue and be sued, and exercise all the powers and perform all the duties hereinafter set forth. In all legal proceedings begun and carried on under the provisions of this act, their corporate name shall be the Drainage Commissioners of (name of township) township, (name of county) county, and State of Illinois.*

§ 2. [CLERK OF COMMISSIONERS—DUTIES.] The town clerk shall be the clerk of the drainage commissioners, he shall be the custodian of all papers and records pertaining to drainage matters in his township, and shall keep in a well bound book to be known as the Drainage Record, a record of the proceedings of the commissioners, and shall enter at length therein, all the findings and orders of the commissioners pertaining to the subject of drainage.

§ 3. [DRAINAGE DISTRICT—HOW ORGANIZED—PETITION.] The following proceedings shall be taken for the purpose of organizing a drainage district. A petition shall be presented to the town clerk, signed by a majority in number of the adult owners of lands lying in said proposed district, and they shall be the owners in the aggregate of more than one-third of the lands lying in said district, setting forth the boundaries of said district, giving the numbers of sections or fractional parts thereof. Said petition shall state that the lands lying within the boundaries of said proposed district require a combined system of drainage or protection from overflow; that the petitioners desire that a drainage district may be organized embracing the lands therein mentioned, for the purpose of constructing, repairing or maintaining a drain or drains, ditch or ditches, within said district, for agricultural, sanitary or mining purposes, by special assessments upon the property benefited thereby. Said petition shall be accompanied by a bond to the drainage commissioners, signed by at least two responsible persons, conditioned for the payment of all costs occasioned by said proceedings, in case said district shall not be organized.

§ 4. [FILING PETITION—NOTICE OF MEETING.] It shall be the duty of the town clerk to file said petition in his office, and he shall within five days after the filing of said petition, give notice in writing to each of the commissioners of highways of such town, of the filing of such petition, and shall give notice by posting written or printed notices, in at least six public places in said township, that a meeting of the drainage commissioners will be held at such place and time, as the commissioners may decide upon, not less than eight days nor more than fifteen days from the date of said notice, for the purpose of organizing said drainage district. He shall also file a copy of said notice in his office.

§ 5. [HEARING—EVIDENCE—FINDING.] It shall be the duty of the drainage commissioners to meet at the time and place mentioned in said notice, and the clerk shall lay before them the said petition and all other papers in the case, and they shall thereupon proceed to ascertain whether the said petition contains the signatures of a majority of the adult persons owning land in said district, and if they are the owners of more than one-third of the land situate in said district; and the affidavits of two or more credible signers of said petition that they have examined the same, are acquainted with the locality of the district, and that they believe that said petition is signed by a majority of the adult owners of land in said district, and that said signers are the owners of more than one-third of the lands in said district, the same may be taken as *prima facie* evidence of the facts set forth in said petition as against the owners of lands in said district, and as con-



clusive evidence against all persons signing said petition, that they have accepted the provisions of this act as to the assessments of benefits and damages hereunder. At such meeting, any other owners of land within said district shall be permitted to place their names on said petition, if they so desire. Any person owning land in said district, whose name does not appear on said petition, may, at said time and place, appear and controvert any material statement in said petition; and any person who has signed said petition may deny or withdraw his signature thereto, on payment of his proportion of costs incurred to that date, and for the purposes of such hearing, the said officers shall have full power to administer oaths to and examine all witnesses produced, and shall decide all such controverted questions at such time and place, and make a written statement of their finding, to be filed with the papers in the case.

§ 6. [DISMISSAL OF PETITION.] If the commissioners shall find that the petition has not been signed by a majority of the adult owners of land situated in said proposed district, or that the signers of said petition do not own more than one-third of the lands in said district, they shall so decide, and the petition shall be dismissed at the cost of the petitioners, which costs shall be apportioned among the petitioners according to acreage of their lands respectively situated in said district. But such apportionment shall not prevent the commissioners from collecting such costs from the sureties required in section three of this act.

§ 7. [WRITTEN STATEMENT OF FINDING.] If the commissioners shall find that the petition is signed by a majority of the adult persons owning lands in said proposed district, and that the signers own more than one-third of the lands situated therein, they shall so decide, and shall make a written statement of their finding, and shall file said statement with the other papers in the case, and the clerk shall enter the same in his record; *Provided*, that if the commissioners shall fail to complete their investigations on the day of meeting, they may adjourn to another day, not more than three days from such first day, and may, for good cause shown, again adjourn in like manner, until such investigation is concluded.

§ 8. [ADJOURNMENT—EXAMINATION OF LAND—PLAT—ESTIMATES.] If the commissioners shall find in favor of the petitioners, as set forth in the last preceding section, they shall then adjourn their meeting to a time not less than eight days nor more than fifteen days, of which time the clerk shall give notice. The commissioners shall, in the meantime, go upon the lands included in the proposed district, and personally examine the same; and they shall have power to employ a competent civil engineer, if in their opinion the services of an engineer be necessary, who shall thereupon, proceed to make such survey and estimates as the said commissioners may direct, and shall make and return to the said commissioners a map or plat of his survey, and a full report of all estimates so required of him.

§ 9. [ORGANIZATION OF DRAINAGE DISTRICT.] At the time appointed for the adjourned meeting, the commissioners shall meet and examine the map and report of the engineer, if any engineer shall have been

employed and if, from their own examination and said map and report if any there be, it shall appear that the lands included in the proposed district will be benefited for agricultural, sanitary or mining purposes by the construction of a drain, or a combined system of drainage, they shall so find; unless they shall find from the evidence of witnesses then introduced that the cost of the proposed work will exceed the benefits to be derived therefrom. And should they find in favor of the petitioners, or should a two-thirds ( $\frac{2}{3}$ ) majority of the owners of land, owning more than one-half ( $\frac{1}{2}$ ) of the lands lying in said proposed district, still desire the formation of said district, and such desire shall be evidenced by a failure to withdraw their signatures from the petition, the commissioners shall enter on their record an order in writing organizing said drainage district, and such district shall thereupon be declared fully organized. Each district shall be designated by a number, as District No. . . . , in . . . township, . . . county, and State of Illinois.

§ 10. [COMMISSIONERS TO LOCATE PROPOSED WORK—MAPS.] Upon the organization of any drainage district as above provided, it shall be the duty of the commissioners to go upon the lands included in such district, and locate the work proposed to be constructed, repaired or maintained, and shall make or cause to be made a map or plat of the work necessary to be done, which map, shall be signed by the commissioners or a majority of them and shall be recorded in the Drainage Record.

§ 11. [RIGHT OF WAY—DAMAGES.] The commissioners shall then proceed to procure the right of way for said work from the owners of the land upon which the same may pass, so far as they can do so by agreement with said owners, which release or releases of right of way shall be in writing, and shall be a perpetual bar to all claims for damages by the grantor or grantors or their assigns, on account of the construction of such work. Such release or releases shall be filed in the town clerk's office, and he shall cause the same to be recorded in the office of the recorder of deeds in and for the county in which said lands are situated: *Provided*, that should the commissioners be compelled to pay damages for the right of way in any lands over which any work may run by virtue of the finding of a jury called to assess damages, as hereinafter provided, that then and in that case they shall allow damages equitably to other owners of lands through which such work may be located, notwithstanding such owners may have released such right of way without adequate compensation.

§ 12. [DAMAGES ASSESSED BY JURY—VENIRE—NOTICE TO OWNERS.] Should the Commissioners be unable to procure the right of way by agreement with the owner or owners of any lands over which the work may be located, they shall file a statement in writing with some justice of the peace in the vicinity, requesting him to issue a *venire* for a jury to assess the damages in such case or cases; and it shall thereupon be the duty of the justice to issue a *venire* for a jury of six disinterested freeholders, to appear at his office at a day and hour therein named, not less than five nor more than eight days therefrom, for the purpose of assessing the damages in the case or



cases mentioned. The justice shall at the same time cause a notice or notices in writing to be served upon the owner or owners of the lands in question, informing him or them of the time and place when the said case or cases will be tried. Said notices may be substantially in the following form:

To A. B. . . . You are hereby notified that a jury has been called to meet at my office in . . . township . . . county, on the . . . day . . . of . . . A. D. 18 . . . at . . . o'clock, . . . M., for the purpose of assessing damages in the matter of the Drainage Commissioners of . . . township . . . county, against you; when and where you can appear and assert your rights in the premises if you desire.

C. S. . . . . J. P.

Said notice shall be served by a constable in the same manner and with like effect as process in civil cases, and his return thereon shall show the manner such service was made, and for such service he shall be allowed the same fees as for service of process in civil cases: *Provided*, that where it shall be made to appear that any of such owners are non-resident, unknown, or minors, notice of such proceeding shall be given by publication in some newspaper published in said county, for two successive weeks prior to the time of such hearing, which notice shall be substantially in the form given above: *Provided*, *further* that in any case where the commissioners certify that the damages will probably exceed two hundred dollars (\$200), the proceedings shall be begun in the county court.

§ 13. [TRIAL—VERDICT—TRANSCRIPT TO BE FILED.] When the jury shall appear, as provided in the foregoing section, the trial shall be conducted as other cases before a justice of the peace, or county court, as the case may be; either party may have the same number of challenges and for the same causes as in other cases before justices of the peace, or the county court, as the case may be. The jury shall hear the evidence offered in the case as to the value of the land proposed to be taken, and all damages consequent upon the construction of the proposed work; and may go upon the premises for the purpose of viewing them, and they shall return as their verdict the amount of damages found, if any, in favor of the owner or owners, and against the commissioners, and the justice of the peace, or county judge, shall enter judgment for the amount of such verdict, which judgment shall be final and conclusive. Vacancies in the panel of jurors shall be filled the same as vacancies in other cases, but vacancies shall in all cases be filled by freeholders, and the same jury shall hear and determine all cases for which the *venire* was issued, and shall return separate verdicts as to each owner or joint owners. And the justice or judge shall thereupon file in the office of the clerk of the drainage commissioners a certified transcript of the proceedings before him in each case.

§ 14. [COMMISSIONERS TO VIEW LANDS—BENEFITS ASCERTAINED—ASSESSMENT.] At the earliest practicable day after the organization of the district, the commissioners shall proceed to view the line or lines of the proposed work and determine the cost of the same, and shall

view the lands to be benefited thereby, and ascertain, to the best of their judgment, the amount of the benefits which will accrue to each tract of land to be affected thereby, and shall assess to each tract of land its proportionate share of the entire cost of such work; but in no event shall any tract of land be assessed for benefits in a greater amount than its proportionate share of the estimated cost of the work and all expenses of proceedings, nor in a greater amount than it will be benefited by the proposed work according to the best judgment of the commissioners; and they shall make out and file in the office of the town clerk an assessment roll, in which shall be set down in proper columns the names of the owners, when known and when unknown, stating "unknown," a description of the premises affected, in words or figures, or both, as shall be most convenient; the number of acres in each tract, the amount of land taken from such tract, and the value thereof; and if damages are allowed, the amount of the same; and if benefits are assessed, the amount of the same; and in case damages are allowed to and benefits assessed against the same tract of land, the balance, if any, shall be carried forward to a separate column for damages or benefits, as the case may be.

§ 15. [FORMER DITCH MAY BE UTILIZED.] When it shall appear to the commissioners that a drain, or ditch has been, in whole or in part, previously constructed for the purpose of draining or protecting from overflow any land to be affected by the work proposed under this act, and such original work can be advantageously utilized, they may estimate the value of such old ditch, and allow the owner such part thereof as will make an equality of burdens and benefits as between the several owners of lands in the said district.

§ 16. [NOTICE OF MEETING TO HEAR OBJECTIONS.] The commissioners shall cause to be personally served upon all parties owning land to be affected by the proposed work, and residing in the county, a written or printed notice of the time when and place where they will meet to hear any and all objections that may be made to their special assessments for benefits, and shall cause to be sent, by mail, such notice to all owners who do not reside in the county, whose land is to be affected, in case their post-office address is known to petitioners, or any of them, or can be ascertained by use of reasonable diligence; and in case the land of any non-resident or minor is to be affected, then publication shall be made in some newspaper published in said county, for three successive weeks prior to the time of such hearing.

§ 17. [PROOF OF NOTICE.] The affidavit of any credible person or persons that he has or they have posted such notices hereinbefore required, and the certificate of the publishers of such newspaper as to such publication, shall be sufficient evidence of such facts.

§ 18. [ASSESSMENT—CORRECTION—CONFIRMATION—APPEAL TO SUPERVISORS—BOND.] At the time of meeting for hearing objections to the special assessments made by the commissioners, they shall hear whatever objections may be urged by any person interested, to any special assessment made by the commissioners, and if satisfied that any injustice has been done in any special assessment, they shall correct the same in accordance with justice and the right of the matter; but



if not so satisfied, they shall confirm the assessment as originally made, and enter an order to that effect. Any person appearing and urging objections, who is not satisfied with the decision of the commissioners in confirming a special assessment against his lands, may appeal from the decision of the commissioners to three supervisors of the county, within ten days after the decision of the commissioners has been rendered, by filing with the town clerk a bond, with security, in double the amount of the assessment, payable to the commissioners, conditioned for the payment of the assessment and all costs occasioned by the appeal, in case said assessment shall be affirmed.

§ 19. [SUMMONS TO SUPERVISORS TO HEAR APPEAL.] It shall be the duty of the town clerk to summon three supervisors of the county living nearest the office of the town clerk, but outside his township, to meet at his office at a time not more than ten days from the filing of the appeal bond for the purpose of hearing any appeal or appeals that may be taken from the decision of the commissioners. Should any of said supervisors fail to appear at the time named, the clerk may adjourn said meeting for a period not exceeding five days, and summon another supervisor or supervisors to fill the vacancy or vacancies.

§ 20. [HEARING—JUDGMENT—APPEAL TO COUNTY COURT.] Whenever the supervisors summoned to hear appeals shall all appear as hereinbefore provided, it shall be the duty of the town clerk to lay before them the assessment roll, and they shall examine the same, and may hear testimony in support of such assessment appealed from and in opposition to the same, and may, if they deem it necessary, visit the lands upon which assessments have been made. Should the supervisors, after hearing the case, affirm the action of the commissioners, they shall file with the clerk their decision to that effect. Should they deem the assessment excessive, they may enter an order remitting such portion of such assessment as they deem in excess of right; or should they deem the assessment wholly erroneous they may wholly annul the same; and the clerk shall correct the assessment roll in accordance with the decision of the supervisors: *Provided*, that either party aggrieved by the decision of the supervisors may appeal to the county court by filing bond in the county clerk's office within ten days from the time when the supervisors render their decision, the party against whose land an assessment has been made shall appeal only, on the ground that such assessment is greater in amount than the benefits accruing to said lands by the construction of the proposed work. Should the commissioners appeal they may do so without giving bond. Should the person against whose lands an assessment has been made appeal, the bond shall be conditioned for the payment of whatever judgment shall be rendered against him in the county court.

§ 21. [HEARING APPEAL—COSTS.] Appeals taken to the county court under the provisions of this act may be heard at any term thereof. *Provided*, ten days has intervened from the time of taking such appeal and the first day of the term, and if not ten days, then such appeal shall be heard at the next term; and trials shall be conducted as in other cases of appeals. Should the decision of the supervisors be

affirmed or wholly reversed, costs shall follow the judgment; but should such decision be modified, costs may be apportioned by the court in its discretion: *Provided*, that in any proceedings under this act, where any costs have been unnecessarily or improperly made, such costs may be adjudged against the party making the same.

§ 22. [APPEAL NOT TO DELAY PROGRESS OF WORK, ETC.] The taking of any appeal by any person or persons, as herein provided, shall not operate to delay the collection of any special assessment from which no appeal has been taken, nor delay the progress of the work.

§ 23. [ASSESSMENT—WHEN PAYABLE.] At the time of confirming such special assessment, it shall be competent for the commissioners to order the assessment of benefits to be paid in installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work; otherwise, the whole amount of such assessment shall be payable immediately upon such confirmation, and shall be a lien upon the lands assessed until paid; and such assessment shall draw interest at the rate of eight (8) per cent per annum from the time they shall become payable till they are paid, and such interest may be collected and enforced as part of the assessments.

§ 24. [COPY OF ASSESSMENT, CERTIFIED TO TREASURER—BOND.] Immediately after the entry of such confirmation of the special assessments, the clerk shall make out and certify to the treasurer a copy of said assessment roll; and the said treasurer shall execute bond to the people of the State of Illinois for the use of all persons interested, in a sum not less than twice the amount of assessments levied, conditioned for the faithful performance of his duties as treasurer of said drainage district, and that he will faithfully account for all money that, by virtue of said office, shall come to his hands; and such bond shall be with such sureties as may be approved by the commissioners, and said bond shall be kept and preserved in the town clerk's office.

§ 25. [TREASURER TO KEEP BOOKS.] It shall be the duty of said treasurer to keep proper books, furnished him by the commissioners, in which he shall keep an accurate account of all moneys received by him, and of all disbursements of the same; he shall pay out no money except upon the order of a majority of the commissioners, and shall carefully preserve on file all orders for the payment of money, given him by the commissioners, and shall turn over all books, papers, vouchers, moneys and property belonging to and in his hands, as such treasurer to his successor in office.

§ 26. [DIVISION OF WORK—LETTING CONTRACT.] The said commissioners, when they have procured the right of way for the proposed work, shall divide the ditch or ditches, into sections a quarter of a mile in length, except the remainder or remainders, after taking out as many full sections as the work contains, which remainder or remainders may be let with the adjoining section, or separately, as the commissioners may think best; or they may let the same in one contract; *Provided, further*, that no drain, ditch, or other work authorized to be constructed or made under this act, shall be constructed or made, in such a manner as to destroy or impair the use-

fulness, or prevent the public use of any bay or harbor, or body of water used as a harbor connected with any navigable stream.

§ 27. [NOTICE OF LETTING—ADVERTISING FOR PROPOSALS.] Upon the confirmation of the assessment, the commissioners shall cause notice to be given of the time and place of the letting, and of the kind and amount of work to be done, and where plans of the same may be seen, by publication for twenty days in some newspaper printed or published in said county. Said bids shall be under seal, and the commissioners may reject any and all bids, and may continue the letting from time to time if, in their judgment, the same be necessary. If the cost of the entire work will not exceed five hundred dollars (\$500), the commissioners shall let the same at such time and in such manner as they may think best. Said commissioners shall not, during their term of office, be interested, directly or indirectly, in any contract for the construction, repair or maintenance of any work in such drainage district, nor in the wages nor supplies to men or teams employed on any work under their jurisdiction. Any person or persons taking any work under contract shall, on the completion thereof, according to contract, be paid for such work by the treasurer, upon the order of the commissioners. If any person or persons to whom any portion of said work shall be let as aforesaid, shall fail to perform said work, the same shall be re-let in such manner as the commissioners may think best.

§ 28. [ASSESSMENT PAID IN LABOR.] In case any person assessed for benefits contracts to do any work, and said work is done according to contract, the commissioners shall give said person a receipt for so much of said assessment as said work amounts to, and said receipt may be received by the treasurer as payment of so much of said assessment.

§ 29. [PAYMENT OF DAMAGES, RIGHT OF WAY, ETC.] All excess, if any, of allowances for right of way and damages, over the amount of special assessment for benefits against the same person, shall be paid or tendered to the owners thereof, before the commissioners shall be authorized to enter upon said lands for the construction of any work thereon; in case the owner is unknown, or there shall be a contest in regard to the ownership of the land, or the commissioners cannot, for any reason, safely pay the same to the owner, they may deposit the same with the clerk of the county court, and the court may order the payment thereof to such party as shall appear to be entitled to the same.

§ 30. [SUITS, ETC.] The commissioners may use money arising from the collection of assessments for the purpose of compromising suits and controversies arising under this act, and in employment of all necessary agents and attorneys in the prosecution or defense of said operations, and to pay all necessary employes.

§ 31. [ENTRY UPON LANDS.] The commissioners from the time of receiving any petition, may authorize any employes to go upon the lands lying within said district, for the purpose of examining the same and making surveys; and after payment or tender of compensation al-



lowed, may authorize all contractors with their servants, teams, tools, instruments, or other equipments for the purpose of constructing such proposed work, and may ever thereafter enter upon said lands as aforesaid, for the purpose of maintaining or repairing such work, doing no more damage than the necessity of the occasion may require, and any person who shall willfully prohibit or prevent any of the aforesaid persons from entering such lands for the purpose aforesaid, shall be fined in a sum not to exceed twenty-five dollars (\$25) per day, for such hindrance, to be collected as other fines.

§ 32. [ADDITIONAL ASSESSMENT.] When the assessments hereinbefore made shall be inadequate to complete the work proposed, or when assessments shall be necessary for maintenance and repair, each tract of land shall be assessed such proportion of the additional cost as its original assessment bore to the total original assessment, and the said additional assessment shall be made by the commissioners in the same manner as the original assessment was made; and in all subsequent matters in relation thereto, the same proceedings shall be had as hereinbefore required in regard to original assessments.

§ 33. [BRIDGES AND CULVERTS -- HOW PAID FOR.] The commissioners shall have power and are hereby required to make all necessary bridges and culverts for the protection of ditches made hereunder; but said bridges and culverts shall be paid for as follows: When in a public highway, it shall be paid out of the road and bridge tax; and when in a farm, it shall be paid for by the drainage commissioner.

§ 34. [SUB-DISTRICTS.] During the progress of the work, or at any subsequent time the commissioners when petitioned to create a "sub-district," (within any district organized as aforesaid), for the purpose of constructing any lateral drain or drains for the further reclamation of lands within such "sub-district," by special assessments of the property benefited thereby, shall be governed by the provisions of this act which are applicable thereto.

§ 35. [NOT TO PREVENT OTHER DRAINAGE.] Nothing in this act shall be construed to forbid or prevent the drainage of any lands, the drainage of which would require to be conducted to the same outlet through which the waters of any ditch constructed under this act shall flow.

§ 36. [PENALTY FOR INJURING, ETC.] Any person who shall wrongfully and purposely fill up, cut, injure, destroy, or in any manner impair the usefulness of any drain, ditch, or other work constructed, established, or lying within any district organized under this act for the purpose of drainage or protection against overflow, may be fined in any sum not exceeding two hundred dollars, to be recovered before a justice of the peace in the proper county. All complaints under this section shall be in the name of the people of the State of Illinois, and all fines, when collected, shall be paid over to the proper commissioners, to be used for the work so injured.

§ 37. [ACTION FOR DAMAGES.] In addition to the penalties provided in the preceding section, the person so wrongfully or purposely filling up or in any manner impairing the usefulness of any such drain or

drains, shall be liable to the commissioners having charge thereof, for all damages occasioned to such work, and to the owners and occupants of land for all damages that may result to them by such wrongful act, which may be recovered before a justice of the peace, if within his jurisdiction, or before any court of competent jurisdiction.

§ 38. [KEEPING DRAINS, ETC., IN ORDER.] All ditches and drains shall, at all times, be kept in good order and repair by the commissioners, and the lands affected by said work, shall pay their proportionate amount of cost, which shall be in the same proportion that the lands were originally assessed.

§ 39. [PENALTY FOR FAILURE TO PERFORM DUTY.] For a failure to perform any of the duties imposed upon them by the provisions of this act, the commissioners so failing shall individually, upon complaint made under oath by any person who has paid a special assessment for the construction, maintenance or repair of such work, be liable to a fine not exceeding one hundred dollars (\$100), to be recovered in an action in the name of the people of the State of Illinois, for the use of the district interested, before any justice of the peace of the county, and all fines, when collected, shall be paid to the treasurer of the district.

§ 40. [DELINQUENT LIST—SALE.] It shall be the duty of the treasurer of each and every drainage district, to make out a certified list of such delinquent lands upon which the assessments remain unpaid, and the same shall be by him, on or before the 10th of March next after the same have become payable, returned to the county collector of the county or counties in which such lands shall lie; and it shall be the duty of the collector to whom such return has been made, to transfer the amounts thereof, from such returns to the tax books in his hands, setting down therein, opposite the respective tracts or lots, in proper columns prepared for that purpose, the amount assessed against each tract or lot; and the like proceedings shall be had, and with like force and effect, in the collection of such delinquent assessments and the sales of said lands for the non-payment thereof, as in ordinary collections of State and county taxes by county collectors, and of sales of real estate by them for such non-payment and of redemptions from such sales.

§ 41. [PAYMENT OF DELINQUENT TAX BEFORE SALE.] Notwithstanding the returns of such delinquent list, the said treasurer of the drainage district may receive payment of any such delinquent assessments and costs, and may give receipts for the same, but shall keep a memorandum of the same, and on or before the day of sale fixed by said county collector for sale of such lands, shall present said memorandum or list to said county collector, for the purpose of having the same checked or marked paid on the delinquent list in his hands; and all amounts collected by the said county collector by sale or otherwise, after deductions of his fees, shall be paid to the treasurer of the drainage district, on demand.

§ 42. [COLLECTOR OF DELINQUENT ASSESSMENT TO GIVE BOND.] When the certified list of such delinquent lands upon which the

assessments remain unpaid has come into the hands of the county collector, as aforesaid, the said collector shall execute bond to the drainage commissioners for the use of all persons interested, in a sum not less than twice the amount of the delinquent assessments, conditioned for the faithful performance of his duties as collector of said delinquent assessments, of said drainage district, and that he will faithfully account for all moneys that by virtue of said delinquent assessments, shall come to his hands; and such bond shall be with such sureties as may be approved by the county judge, and said bond shall be kept and preserved in the county clerk's office.

#### COUNTIES NOT UNDER TOWNSHIP ORGANIZATION.

§ 43. [DRAINAGE COMMISSIONERS.] The county commissioners, in counties not under township organization, shall be the drainage commissioners in and for their respective counties, shall be a body politic and corporate, with like powers and duties as drainage commissioners as hereinbefore provided for. In all legal proceedings under this act their corporate name shall be "The Drainage Commissioners of . . . County, State of Illinois." In such counties the county clerk shall be the clerk of the drainage commissioners, and he shall perform all duties devolved upon clerks of drainage commissioners, as hereinbefore specified in this act.

§ 44. [PETITION TO FORM DISTRICT.] Whenever a majority of the adult owners of land, and owning more than one-third of any area of lands lying in a county not under township organization, and requiring a combined system of drainage or protection from overflow, desire to form a drainage district, they shall file in the office of the county clerk a petition setting forth the facts as provided in section three of this act; which petition shall be accompanied by a bond as in said section provided. It shall thereupon be the duty of the clerk to give notice that a meeting of the drainage commissioners will be held, as provided in section four of this act.

§ 45. [MEETING OF COMMISSIONERS—PROCEDURE.] The commissioners shall meet at the time mentioned in said notice and examine the said petition, and they shall thenceforth, in all preliminary and subsequent matters, as to the organization of such district, location of work, procuring right of way, awards of damages, levy of special assessments for benefits, confirmation of the same and other matters, proceed in accordance with the provisions of this act in regard to the duties and powers of drainage commissioners of townships, and shall in all cases be vested with the same powers and exercise the same duties as such commissioners.

§ 46. [APPEALS.] Appeals from the orders of drainage commissioners, confirming any special assessments in counties not under township organization, may be taken by any person interested who is not satisfied with the decision of the commissioners to the county surveyor, county treasurer and sheriff, who shall constitute a board of appeals, who shall meet when notified by the clerk for the purpose of hearing appeals in such cases; and at such meeting they shall proceed as hereinbefore provided for supervisors when hearing appeals in like cases. Either



party aggrieved by the action of the board of appeals may appeal therefrom to the county court on the same conditions, under the same restrictions and with the like effect as hereinbefore provided for appeals from supervisors.

DISTRICTS COMPOSED OF LANDS LYING IN TWO COUNTIES, OR IN TWO TOWNSHIPS IN COUNTIES UNDER TOWNSHIP ORGANIZATION.

§ 47. [LANDS IN TWO COUNTIES—MODE OF PROCEEDING.] When lands lying in two counties, or in two townships in counties under township organization, would be benefited by a combined system of drainage, and a majority of the owners of such lands, owning more than one-third ( $\frac{1}{3}$ ) of such lands, desire the formation of a drainage district, they may file a petition as provided in section three of this act, in the office of the clerk of that board of commissioners in whose jurisdiction the greater part of said lands are situated. It shall thereupon be the duty of said clerk to give notice as provided in said section, and at the meeting held in pursuance of such notice both boards of commissioners shall act; and should a district be organized, all of such commissioners shall constitute the drainage commissioners of such district, and in the preliminary, and all subsequent proceedings in regard to formation of such district, construction of works therein, procuring right of way, the award for damages, the levy and collection of special assessments for benefits, the confirmation thereof and appeals therefrom, they shall proceed as hereinbefore provided: *Provided*, that all proceedings for condemnation of right of way and the assessment of damages consequent upon the construction of such work, shall take place in the county in which the lands affected are situated. The clerk in whose office the petition is filed shall be the clerk of such drainage commissioners.

§ 48. [APPEALS—HOW TAKEN.] When such district lies wholly within a county or counties under township organization, appeals from the order of the commissioners confirming special assessments shall be taken to three supervisors, as hereinbefore provided, but where the district lies in two counties, all of such supervisors shall not reside in the same county. When such district lies wholly within counties not under township organization, appeals shall be taken to the county surveyors, county treasurers and sheriffs of the several counties, who shall act as a joint board of appeals. And when the district lies partly in a county under township organization, and partly in a county not under township organization the appeal shall lie to a board consisting of three supervisors from the county under township organization chosen as provided in section nineteen of this act; and the county surveyor, county treasurer and sheriff of the county not under township organization shall act as a joint board. All of said boards of appeal in this section provided for shall proceed and determine the cases submitted to them in the manner and to the effect set forth in section twenty hereof. From the decisions of any of the boards of appeal mentioned in this section, appeals shall lie, as provided in section twenty of this act, to the county court of the county in which the land concerning which the appeal is taken is situated, and such appeal shall be tried in like manner and with like effect as hereinbe-

fore provided in cases of appeals to such courts. Districts lying in two townships or counties shall be designated as Union District No. . . . in . . . , and . . . . . township or counties, as the case may be.

#### SPECIAL DRAINAGE DISTRICTS.

§ 49. [HOW FORMED—PETITION, ETC.] Whenever a majority of the adult owners of land, who shall be the owners of more than one-third of the lands in any area of territory lying in more than two townships either in the same or different counties under township organization, or lying partially in more than two townships, in a county under township organization, and partly in a county not under township organization, shall file in the office of the clerk of the county court of the county in which the greater part of such lands shall lie, a petition setting forth the facts as provided in section 3 of this act, and praying that a special drainage district may be formed, it shall be the duty of said clerk to give notice by posting written or printed notices in at least six public places in such township or county in which said proposed district or any part thereof shall lie, and also by publication in some weekly newspaper published in his county for two successive weeks, stating the day when such petition will be heard, which hearing may be at any term of said court, occurring not less than ten days after the last publication above provided for. The petition above mentioned shall in all cases be accompanied by a bond conditioned for the payment of all costs to the officers of the court, or accruing to other parties by virtue of such proceeding, in case such district is not established; which bond shall be signed by at least three responsible persons and approved by the clerk.

§ 50. [HEARING ON PETITION.] It shall be the duty of the said court at the time set for such hearing, to examine the said petition, and if the court shall find, upon examination, that it is signed by a majority of the adult owners of the lands within said proposed district, and that such signers are the owners of more than one-third of the lands lying therein, the court shall so find. The affidavits of three credible signers of such petition that they have examined the same, that they are acquainted with the locality, and they verily believe that such petition is signed by a majority of the adult owners of lands lying in said proposed district, and that they are the owners in the aggregate of more than one-third of such lands, shall be taken as *prima facie* evidence of such facts, against all persons owning lands therein, and as conclusive evidence against all the signers of such petition of the facts therein stated, and that they have accepted the provisions of this act as to the assessments of benefits and damages hereunder. At such meeting any other owners of land within said district shall be permitted to place their names on said petition if they so desire. Any person owning land in said district whose name is not on said petition may, at said time and place, appear and controvert any material statement in said petition, or any signer thereof may deny or withdraw his signature thereto on payment of his proportion of costs incurred to that date, and for the purpose of such hearing the court shall have power to examine witnesses produced at such time.

§ 51. [PROCEEDINGS ON HEARING—APPOINTMENT OF COMMISSIONERS.] Should the court find against the petitioners, it shall enter an order to that effect, and the petition shall thereupon be dismissed at the cost of the petitioners. Should the court find in favor of the petitioners, it shall enter an order to that effect, and it shall thereupon be the duty of the court to appoint three drainage commissioners for said district, who shall at once proceed to the examination, survey and organization of said district in all matters as provided in sections eight and nine of this act, and the clerk shall give notice of the time when and place where the commissioners will meet to complete the organization of such district, which time shall not be more than thirty (30) days subsequent to the date of the appointment of such commissioners. At the meeting for completing the organization of such district the proceedings shall in all respects conform to the requirements of this act, as set forth in the matter of the formation of districts lying wholly within a township. Upon the filing of the order of the commissioners declaring such district organized, the clerk shall enter the same of record, and said district shall thereupon be deemed fully organized.

§ 52. [CORPORATE NAME—POWERS.] Each special drainage district organized as herein provided, shall be known and designated by a name, as “ . . . Special Drainage District, in the county or counties of . . . , and State of Illinois.” The commissioners thereof shall be a body politic and corporate, with like powers as herein conferred upon other drainage commissioners.

§ 53. [NOTICE OF ELECTION.] So soon as a special drainage district has been organized, it shall be the duty of the county clerk, who shall be the clerk of the commissioners thereof, to give notice by posting written or printed notices in at least six public places in said district, that on a day therein named, not less than ten days from the date of notice, at a place in said notice designated, an election will be held for the purpose of electing three drainage commissioners for said district.

§ 54. [ELECTION—COMMISSIONERS—TERM OF OFFICE.] At all elections held for the election of drainage commissioners, the drainage commissioners then in office shall be the judges of election, and in the absence of any of them the electors present may choose a person or persons to fill the vacancy or vacancies. Such elections shall be conducted in all respects in accordance with the general election laws of this State: *Provided*, that no person shall be eligible to the office of drainage commissioner, or to vote at any election held hereunder who is not a resident of and an owner of land in such district. The returns of such election shall be transmitted to the clerk of the commissioners, who shall canvass the vote as the returns for the election of county officers are canvassed, and the three persons having the highest number of votes shall be declared elected, and the clerk shall thereupon notify said persons of their election. The persons so elected shall determine among themselves by lot their respective terms of office, one of whom shall serve for one year, one for two years, and one for three years, or such parts thereof as may expire upon the



election of their successors respectively; and annually thereafter, on the first Saturday of September, there shall be elected in each special district one drainage commissioner, who shall hold his office for three years, and until his successor is elected and qualified.

§ 55. [OATH—BOND—TREASURER—BOND—DUTIES—TERM OF OFFICE.] Said commissioners shall thereupon each take an oath to faithfully discharge the duties of his office as drainage commissioner, which oath shall be signed by him and filed in the office of the clerk. They shall then appoint some person who shall be a land owner within and a resident of said district, as treasurer, who shall give bond to the commissioners in such sum as shall be fixed by them not less than double the amount likely to come into his hands in any one year, which bond shall be signed by at least two responsible securities and approved by the commissioners and filed in the office of the clerk. He shall hold his office for two years, but may be removed by the commissioners at any time for cause. He shall have like powers and perform the same duties herein provided for other treasurers of drainage districts. He shall pay out moneys only on orders signed by the commissioners, or a majority of them.

§ 56. [DUTIES OF COMMISSIONERS.] The commissioners shall then at once proceed to locate the drain or drains, ditch or ditches, procure the right of way, institute proceedings therefor, and for the award for damages consequent upon the construction of the proposed work, make special assessments for benefits, and in all the foregoing and subsequent proceedings, including the letting of contracts, the confirmation and collection of special assessments and all other matters they shall be governed by the provisions of this act, relating to the powers and duties of drainage commissioners of townships.

§ 57. [APPEALS.] Appeals from the orders of the commissioners of special districts confirming special assessments, if the district lies wholly within a county or counties under township organization, shall be taken to three supervisors, as provided for appeals in cases of districts lying wholly within a township or in two counties under township organization, as the case may be. If the district lies within a county or counties under township organization and a county or counties not under township organization, the appeal shall be taken to the joint boards of appeal of the several counties. From the decision of such tribunals appeals shall be as hereinbefore provided, and with like effect to the county court of the county in which the land upon which the assessment made is situated.

§ 58. [POWER TO BORROW MONEY.] The commissioners may borrow money not exceeding in amount, half the amount of assessments unpaid at the time of borrowing, for the construction of any work which they shall be authorized to construct, and may secure the same by notes or bonds bearing interest at the rate of not exceeding eight per cent per annum, and not running beyond one year after the last assessment on account of which the money is borrowed shall fall due, which notes or bonds shall not be held to make the commissioners personally liable for the money borrowed, but shall constitute a lien upon the assessment for the repayment of the principal and interest thereon.

§ 59. [WHO TO BE TREASURER.] In all districts, in counties under township organization, the supervisor of the township in which the district is situated, shall be the treasurer of the district. When the district lies in two townships, the supervisor of one of the townships, to be designated by the commissioners, shall be the treasurer. When a district lies in a county not under township organization, the county treasurer, shall be the treasurer, and when the district lies in two counties not under township organization, the commissioners shall appoint the treasurer of one of said counties, the treasurer of the district. When a district lies partly in a county under township organization, and partly in a county not under township organization, the commissioners may appoint either a supervisor, or county treasurer, as the treasurer, of the district, as they may determine. The treasurer shall in all cases, give to the commissioners a bond in double the amount of the sum likely to come into his hands for the use of the district interested.

§ 60. [MEANING OF "DITCH."] The word "ditch," when used in this act, shall be held to include a drain or water course, and the petition for any such improvement, shall be held to include any lateral ditch, drain, or water course necessary to be constructed to secure the object of the improvement, whether the same be mentioned therein, or not and this act shall extend to and include the straightening of streams and water courses, and cleaning driftwood out of the same, and the making of such ditches or drains as may be found necessary to divide the overflow of any stream or water course.

AN OWNER, OR JOINT OWNERS AS TENANTS IN COMMON, TO PROCURE  
OUTFALLS.

§ 61. [OPENING DRAINS THROUGH LANDS OF ANOTHER.] Any owner, or joint owners as tenants in common, desirous to drain the same and in order thereto deem it necessary that a new drain or drains should be opened through lands belonging to another owner, or that an existing drain or drains in lands belonging to another owner should be cleansed, widened, straightened or otherwise improved, may apply to such owner, who is hereinafter referred to as the adjoining owner, for leave to make such drain or drains, or improvement in drain or drains, through or on the lands of such adjoining owner.

§ 62. [NOTICE TO ADJOINING OWNER.] Any such application as aforesaid shall be by notice in writing, under the hand of the applicant, and shall be served on the owner, and also on the occupier, if the owner be not the occupier. The notice shall state the nature of such drain or drains, or improvements in drain or drains, be accompanied by a map, on which the length and depth, and if an open ditch, the width, of the proposed drain or drains, or improvements in drain or drains, shall be delineated, and shall further state the compensation, if any, which the applicant proposes to pay, or which the applicant proposes that the adjoining owner shall pay.

§ 63. [ASSENT BY ADJOINING OWNER.] The adjoining owner may, by deed, under his hand and seal, assent to such application, upon such terms and payment of such compensation as may be agreed upon; and any assent so given, or agreement so made, shall be binding on all parties, their heirs and assigns.

§ 64. [ASSENT TO BE RECORDED.] The applicant shall cause to be recorded, in the recorder's office in the county wherein the land is situate, the deed containing the assent of the adjoining owner to the proposed drain or drains, or improvement in drain or drains, and, also, a map showing the location of the same.

§ 65. [WHEN OWNER DOES NOT ASSENT.] If the adjoining owner does not assent to the application, then the said person making the application may give notice, in writing, to said adjoining owner, and, also, to the occupier, if the owner be not the occupier, that he will, on a day named, not less than five days thereafter, apply to the drainage commissioners to locate said drain or drains.

§ 66. [DRAINAGE COMMISSIONERS MAY ACT.] Upon the receipt of such application, it shall thereupon be the duty of the drainage commissioners, at the time mentioned in said notice, to go upon the lands and examine the line or lines of the proposed ditch or ditches; and they shall have power to make such alteration, either in the location or mode of construction, as they may deem best, and may form a drainage district embracing such drain or drains, and shall enter on their record an order, in writing, organizing said drainage district, and such district shall thereupon be declared organized. The maps, as finally adopted, shall be signed by the commissioners, or a majority of them, and shall be recorded in the drainage record.

§ 67. [PROCEEDINGS FOR RIGHT OF WAY, ETC.] The further proceedings for procuring right of way, award of damages, levy of special assessments for benefits, confirmation of the same and other matters, shall be in accordance with the provisions of this act, which are applicable thereto.

§ 68. [FEES.] The commissioners and clerk, and members of boards of appeals shall each receive one and one-half dollars, and if a civil engineer shall have been employed not to exceed five dollars per day, for the time actually employed in the discharge of the duties prescribed by this act; the compensation to be paid by the district for which the service may be rendered. Their accounts for services shall be rendered under oath and filed with the clerk, and kept by him with and among the records of his office. The treasurer shall receive, as his compensation, two per cent, of the funds collected by him, and one per cent on the amount paid him by the county treasurer. The county treasurer shall be entitled, as his compensation two per cent, on the amount collected by him on delinquent assessments.

§ 69. [ACT NOT AFFECT PRIOR LAWS.] This act shall not be construed to repeal or interfere with the execution and enforcement of other laws on the subject of drainage or levees, and drains passed by this General Assembly.

APPROVED May 29th, 1879.



## ROADS AND BRIDGES.

### IN COUNTIES UNDER TOWNSHIP ORGANIZATION.

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| § 1. Certain roads declared public highways.                                | § 66. Notice against fast driving on bridge.                              |
| § 2. Turn to the right.   | § 67. Penalty for fast driving on bridge.                                 |
| § 3. Drunken driver.  | § 68. Ditches, etc.   |
| § 4. Drunken driver—discharge of.   | § 69. Altering, widening, vacating and laying out roads.                  |
| § 5. Running horses on public road.   | § 70. Petition.   |
| § 6. Teams to be hitched.   | § 71. Time of meeting to be fixed—notice.                                 |
| § 7. Owner liable for damages—driver of stage, etc., guilty of misdemeanor. | § 72. Adjournment—decision—proceedings thereon.                           |
| § 8. Carriage defined.  | § 73. In case of vacation of road.  |
| § 9. Restriction—jurisdiction.  | § 74. When for laying out, altering or widening road.                     |
| § 10. Duties of commissioners of highways.                                  | § 75. Damages may be first ascertained.                                   |
| § 11. Commissioners to choose treasurer—his duties—bond.                    | § 76. Damages may be agreed upon, etc.                                    |
| § 12. Annual accounting of commissioners.                                   | § 77. Summoning jury to assess damages.                                   |
| § 13. Meeting of commissioners—record to be kept.                           | § 78. Notice to owners.   |
| § 14. Assessment of road labor and tax.                                     | § 79. Manner of selecting jury.   |
| § 15. Road labor—who liable—time.   | § 80. Challenge of jurors.  |
| § 16. Tax of town or village, etc.  | § 81. Notice to unknown owners.   |
| § 17. Road labor and tax list.  | § 82. Service of notice.  |
| § 18. Copies to be given to overseers.                                      | § 83. Oath of jury—trial.   |
| § 19. Overseers to add names to list.                                       | § 84. Trial—verdict—judgment.   |
| § 20. Credits for labor on private roads.                                   | § 85. Separate assessments—continuances, etc.                             |
| § 21. Notice of tax, and that same may be worked out.                       | § 86. Final decision by commissioners—notice.                             |
| § 22. Penalty for neglect of duty.  | § 87. Commissioners may revoke proceedings.                               |
| § 23. Overseers of highways—how chosen—term of office.                      | § 88. Order to alter, widen or lay out road—plat—filing papers—recording. |
| § 24. Duties of overseers.  | § 89. When damages released or agreed upon.                               |
| § 25. Refusal to serve, etc.,—vacancy—                                      | § 90. Inducement may be offered.  |
| § 26. Notice of appointment to fill vacancy.                                | § 91. Town clerk's record, etc., evidence—effect of same                  |
| § 27. Penalty against overseers.  | § 92. Private roads.  |
| § 28. Notice to perform road labor.   | § 93. Limitation of time to open.   |
| § 29. Days to be worked—commutation.  | § 94. Crops—fences.   |
| § 30. Payment of commutation.   | § 95. Payment for work on private roads.                                  |
| § 31. Teams may be required.  | § 96. Roads on town and county lines.                                     |
| § 32. Substitute.   | § 97. Allotment of repair, etc., division of expenses                     |
| § 33. Idlers, etc.—penalty.   | § 98. Appeal.   |
| § 34. Penalty for neglect, etc., to appear.                                 | § 99. Trial of appeal—power of supervisors appealed to.                   |
| § 35. Complaint of overseer.  | § 100. Report of decision—compensation—decision final.                    |
| § 36. Summons.  | § 101. Costs of appeal—bond.  |
| § 37. Trial—execution—no exemption.   | § 102. Majority may decide.   |
| § 38. Collection of execution.  | § 103. Appeal when road is on town or county line                         |
| § 39. Application of fine.  | § 104. Town and county line road—how allotted—what deemed such.           |
| § 40. Excuse not to exempt from labor.                                      | § 105. State line roads.  |
| § 41. Notice of road tax—tax to be received in labor or money.              | § 106. Town and county line bridges.                                      |
| § 42. Receipt.  | § 107. Contracts in reference to such bridges.                            |
| § 43. Delinquent road tax—return.   | § 108. Enforcement of contracts.  |
| § 44. Penalty for neglect to return.  | § 109. Effect of judgment on such contract.                               |
| § 45. When road labor to be worked out.                                     | § 110. County aid to build bridge.  |
| § 46. Overseer's annual return.   | § 111. Vote to borrow money to build bridge.                              |
| § 47. Account—moneys paid to successors.                                    | § 112. Re-survey and plat of roads.                                       |
| § 48. Penalty for neglect.  | § 113. New road not to vacate old road, unless, etc.                      |
| § 49. Supervisors to lay delinquent list before county board.               | § 114. Contracts for bridges.   |
| § 50. Levy of delinquent tax.   | § 115. Orders received for tax.   |
| § 51. Compensation of overseers.  |   |
| § 52. When road tax may be collected in money only.                         |   |
| § 53. Plat of road districts.   |   |
| § 54. County clerk to designate district on tax book.                       |   |
| § 55. Abstract of tax due districts.  |   |
| § 56. Tax to be paid to districts.  |   |

§ 57. Destroying, etc., guide boards, etc.	§ 116. Removal of fences.
§ 58. Injuring or obstructing road.	§ 117. Compensation of commissioners.
§ 59. Injuring or destroying sidewalk, bridge, etc.	§ 118. Road to be opened in five years.
§ 60. Suits.	§ 119. Tax to be collected in money.
§ 61. Application of fines.	§ 120. How tax extended and collected.
§ 62. Sidewalks—trees—fencing hedge.	§ 121. Certificate of tax levied.
§ 63. Farm crossing under road.	§ 122. Tax paid to treasurer of commissioners.
§ 64. When owner may connect fence, bridge, etc.	§ 123. List of tax-payers to be furnished clerk.
§ 65. Width of road.	§ 124. Repeal.

## IN COUNTIES UNDER TOWNSHIP ORGANIZATION.

AN ACT in regard to roads and bridges in counties under township organization. Approved May 28, 1879. In force July 1, 1879.

§ 1. [CERTAIN ROADS DECLARED PUBLIC HIGHWAYS.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all roads within this State, which have been laid out in pursuance of any law of this State, or of the late territory of Illinois, or which have been established by dedication or uses for twenty years, and which have not been vacated in pursuance of law, are hereby declared to be public highways.

§ 2. [TURN TO THE RIGHT.] Whenever any person, traveling with any carriages, shall meet on any turnpike, road or public highway in this State, the person, so meeting shall seasonably turn their carriages to the right of the centre of the road, so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offence, to be recovered by the party injured: *Provided*, this section shall not be construed to apply to any case, unless some injury to persons or property shall occur by the driver of the carriage or wagon refusing to turn to the right of the beaten track, nor shall it be construed to extend to a case where it is impracticable, from the nature of the ground, for the driver of the carriage or wagon to turn to the right of the beaten track.

§ 3. [DRUNKEN DRIVER.] No person owning any carriage, running or traveling upon any road in this State, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness, or the excessive use of spirituous liquors, and if any such owner shall violate the provisions of this section, after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day for all the time during which he shall thereafter have kept any such driver in his employment.

§ 4. [DRUNKEN DRIVER—DISCHARGE OF.] If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his employ, within one month after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice.

§ 5. [RUNNING HORSES ON PUBLIC ROAD.] No person driving any carriage upon any turnpike road or public highway within this State, with or without passengers therein, shall run his horses or carriage, (or permit the same to run) upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding ten dollars, or imprisoned not exceeding sixty days, at the discretion of the court.

§ 6. [TEAMS TO BE HITCHED.] It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto while passengers remain therein, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other competent person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars, to be recovered by action, to be commenced within six months; and unless the amount of such recovery be paid forthwith, execution shall be immediately issued therefor.

§ 7. [OWNER LIABLE FOR DAMAGES—DRIVER OF STAGE, ETC., GUILTY OF MISDEMEANOR.] The owners of every carriage running upon any turnpike road or public highway, for the conveyance of passengers, shall be liable, jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person; and that, whenever the act occasioning such injury or damage be willful, negligent or otherwise, in the same manner that such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, willfully offending against the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned not exceeding four months, or fined not exceeding three hundred dollars.

§ 8. [CARRIAGE DEFINED.] The term "carriage" as used in this act, shall be construed to include stage coaches, wagons, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of passengers and goods, or either of them.

§ 9. [RESTRICTION—JURISDICTION.] Nothing contained in this act shall interfere with or affect any law concerning hackney coaches or carriages in any of the cities, towns or villages of this State, nor interfere with nor affect the laws or ordinances of any such city, town or village, for the licensing or regulating such coaches or carriages. Justices of the peace shall have jurisdiction in all cases arising under this act, where the penalty does not exceed their jurisdiction.

§ 10. [DUTIES OF COMMISSIONERS OF HIGHWAYS.] The commissioners of highways in the several towns of this State shall have the care and superintendence of highways and bridges therein, and it shall be their duty:



*First.*—To give directions for the repairing of roads and bridges in their respective towns, and to cause the building of bridges when the public interests or necessity require it.

*Second.*—To lay out and establish roads, to regulate the roads already laid out, and to alter or vacate such roads, as they, or a majority of them shall deem proper as hereinafter provided.

*Third.*—To cause such roads used as highways as have been laid out, or dedicated to public use, but not sufficiently described, and such as have been used for twenty years, but not recorded, to be ascertained, described and entered of record in the town clerk's office.

*Fourth.*—To cause the highways and bridges which are or may be erected over streams intersecting highways, to be kept in repair.

*Fifth.*—To divide their respective towns into so many road districts as they shall deem convenient, by writing, under their hands, to be lodged with the town clerk, and by him to be entered in the town book; such division to be made annually, if they shall think it necessary; and in all cases to be made at least ten days before the annual town meeting.

*Sixth.*—To assign to each of the said road districts such of the inhabitants liable to work on highways as they shall think proper, having regard to proximity of residence as much as may be.

*Seventh.*—To require the overseers of highways, from time to time and as often as they shall deem necessary, to warn all persons to work on highways to come and work thereon, with such implements, carriages, plows and teams as they may have; and the said commissioners, or any of them, shall direct and see that persons working or repairing the highways leave undisturbed all stones or other monuments marking sectional and other corners, which may be in the public roads worked or repaired by them.

*Eighth.*—To take possession of and keep all scrapers, plows and other tools belonging to their town, wherever the same may be found, and not allow the same to go to waste, and not lend the same, except to persons employed by them to work on the roads by contract or otherwise.

*Ninth.*—To purchase for use upon highways such necessary tools, implements and machinery as may be necessary: *Provided, however,* that whenever either one of such tools, implements or machinery, shall cost more than two hundred dollars, that the purchase thereof shall be first submitted to a vote of the legal voters of such township, upon ten days previous notice by the town clerk in his annual town meeting notice, stating the tools, implements, or machinery proposed to be purchased, together with the price thereof; and said vote shall be by ballot, and shall read "for purchase" or "against purchase" and if a majority of all the votes so cast at said election shall be in favor of such purchase, then such purchase may be made.

*Tenth.*—To cause to be erected and kept in repair, at the forks of crossing place of the most important public roads, a post and guide-boards, with plain inscriptions thereon in letters and figures, giving directions and distances to the most noted places to which such road may lead; to prevent thistles, burdock, cockle-burs, mustard, yellow-dock, Indian mallow, and jimson weed from seeding, and to extirpate the same so far as practicable, and to prevent all rank growth of vegetation in the public highway, so far as the same may obstruct public travel; and the said highway commissioners may, in their discretion, sink and construct wells, with a suitable pump or other suitable fixture, and a water-trough attached thereto, and keep the same in repair, for public use for watering teams, at the intersection of the most important roads in their towns or road districts; and they may also adopt any other suitable and convenient mode of supplying water in troughs, conveniently situated on the public highways, for public use, at other points than at such intersections; and the cost of such improvements shall be paid out of the road and bridge funds of such town.

§ 11. [COMMISSIONERS TO CHOOSE TREASURER—HIS DUTIES—BOND.] At the first meeting of the commissioners of highways, after the annual town meeting, they shall proceed to choose one of their number as treasurer. The treasurer so chosen shall receive and have charge of all moneys raised in the town for the support and maintenance of roads and bridges, excepting such portions of the moneys as are hereinafter directed to be paid to the authorities of incorporated villages, towns and cities. He shall hold such moneys, at all times subject to the order of the commissioners of highways, and shall pay them over upon their order, or a majority of said commissioners, and not otherwise. He shall execute bond, with good and sufficient security, in such manner as the supervisor and town clerk shall determine, conditioned for the faithful discharge of his duties as such treasurer, and that he will honestly and faithfully account for and pay over, upon the order of the commissioners of highways, all moneys that shall come to his hands by virtue of his said office; which bond shall be payable to the supervisor of the town and his successor in office, and be approved by the supervisor and town clerk, and filed in the town clerks office, but such treasurer shall not receive any additional compensation for such services, and he shall keep an account in a book provided by the commissioners, of all moneys received and all moneys paid out, showing in detail to whom and on what account the same is so paid.

§ 12. [ANNUAL ACCOUNTING OF COMMISSIONERS.] The commissioners of highways, of each town shall render to the board of town auditors, at their annual meeting, for auditing the accounts of town officers, an account in writing, stating:

*First.*—The labor assessed and performed in such towns.

*Second.*—The sums received by such commissioners, for fines and commutations and all other moneys received under this act.

*Third.*—A statement of the improvements necessary to be made on such roads and bridges, and an estimate of the probable expense of

making such improvement, beyond what the labor to be assessed in that year and the road tax will accomplish.

*Fourth.*—Also, a statement in writing, of all expenses and damages in consequence of laying out, altering or discontinuing roads.

*Fifth.*—Also a statement of the amount received from the collector of the town, or from any other source, up to the time of such statement, and the manner in which the same, if any sum, has been paid out and expended, to whom and on what account.

§ 13. [MEETINGS OF COMMISSIONERS—RECORD TO BE KEPT.] The commissioners of highways of each town shall meet, on the second Tuesday after the annual town meeting in each year, at the town clerk's office, and afterwards at such other times and places as they shall think proper. Said commissioners shall keep a correct record of their proceedings at all meetings.

§ 14. [ASSESSMENT OF ROAD LABOR AND TAX.] The town clerk shall deliver the lists filed by the overseers, to the commissioners of highways of the town, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their town the next ensuing year.

§ 15. [ROAD LABOR—WHO LIABLE—TIME.] Every able-bodied male inhabitant, being above the age of twenty-one years and under the age of fifty (excepting paupers, idiots, lunatics, and such others as are exempt by law,) shall be required to labor on the highways in their respective road districts, not less than one nor more than three days in each and every year.

§ 16. [TAX OF TOWN OR VILLAGE, ETC.] The commissioners of highways of each town, shall annually ascertain, as near as practicable, how much money must be raised by tax on real and personal property, for the making and repairing of roads only, to any amount they may deem necessary, not exceeding forty cents on each one hundred dollars worth, as valued on the assessment roll of the previous year: *Provided*, that the tax on the property levied for road purposes only, lying within an incorporated village, town or city, in which the streets and alleys are under the care of the corporation, shall be paid over to the treasurer of such village, town or city, to be appropriated to the improvement of roads, streets and bridges, either within or without said village, town or city, and within the township, under the direction of the corporate authorities of such village, town or city: *Provided, further*, that when any of said tax is expended beyond the limits of said village, town or city, it shall be with the consent of the road commissioners of the town. *And, provided, further*, that the authorities of such incorporated town, city or village may at any time direct the collector not to collect the tax so levied within the limits of such incorporated town, city or village.

§ 17. [ROAD LABOR AND TAX LIST.] The commissioners of highways shall affix to the name of each person named in the lists furnished by the overseers, the number of days assessed to each person



for highway labor, and they shall make a list for each district, containing a description of each tract of land in the district and the name of the owner, if known and also the names in alphabetical order of the personal property tax payer, and shall set opposite each tract of land the valuation thereof, as taken from the assessment roll of the previous year, and opposite each tax payers name the amount of his personal assessment, as taken from said roll, and opposite each valuation and assessment they shall extend the road tax assessed thereon in a separate column. The lists so prepared shall be subscribed by the commissioners, and deposited with the town clerk, to be filed in his office.

§ 18. [COPIES TO BE GIVEN TO OVERSEERS.] The commissioners shall direct the clerk of the town to make a copy of each list, and shall subscribe such copies, after which they shall cause the several copies to be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed. One copy for each overseer shall contain the name and number of days assessed to each person, the other the real and personal property road tax.

§ 19. [OVERSEERS TO ADD NAMES TO LIST.] It shall be the duty of the overseers to add the names of persons left out of any such list, and of new inhabitants, and to rate the persons so added in the same proportion to work on the highways as others rated by the commissioners on such list, subject to an appeal to the commissioners.

§ 20. [CREDITS FOR LABOR ON PRIVATE ROADS.] It shall be the duty of commissioners of highways of each town to credit such persons as live on private roads, and work the same so much on account of their assessment, as such commissioners shall deem necessary to work such private road, or to annex such private road to some of the highway districts.

§ 21. [NOTICE OF TAX, AND THAT SAME MAY BE WORKED OUT.] The town clerk shall, within ten days after the commissioners of highway have filed in his office the amount of road tax assessed on the real and personal estate of the towns, post a notice on the outer door of the house where the town meeting was last held, and two other public places in said town, stating the amount of road tax assessed on each one hundred dollars worth of the real and personal estate of the town, and that all persons interested can pay the same in labor on the highways, under the direction of the overseer of highways, in the district where the land or personal property is situated.

§ 22. [PENALTY FOR NEGLECT OF DUTY.] If the commissioners of highways shall refuse or neglect to perform any of the duties enjoined on them by this act, they shall severally forfeit not less than ten dollars nor more than fifty dollars, and may be proceeded against, severally or jointly, for the recovery of such forfeiture before any justice of the peace in the proper county having jurisdiction.

§ 23. OVERSEERS OF HIGHWAYS—HOW CHOSEN—TERM OF OFFICE.] There shall be chosen at the annual town meeting in each town, as

many overseers of highways as there are road districts in the town; and each overseer of highways, so chosen, shall be a resident of the road district for which he is elected, and shall hold his office for one year.

§ 24. [DUTIES OF OVERSEERS.] It shall be the duty of overseers of highways in each town:

*First.*—To repair and keep in order the highways within their several districts for which they shall have been elected.

*Second.*—To warn all persons, from whom road labor is due, to work on the highways at such times and places, within their several districts, as they may think proper. The overseers of highways may contract with persons owing poll tax for road purposes, to perform a certain amount of labor on any road or bridge in their town or road district for the amount of such tax; and if the work is done within the time that the money should have been paid, the overseer shall give such person a receipt for such labor done or performed.

*Third.*—To collect all fines and commutation money, and to execute all lawful orders of the commissioners of highways.

*Fourth.*—To deliver to the clerk of the town, within ten days after their election or appointment, a list, subscribed by such overseers, of the names of all the inhabitants in his road district who are liable to work on highways.

§ 25. [REFUSAL TO SERVE, ETC.—VACANCY—HOW FILLED.] If any person chosen or appointed to the office of overseer of highways, shall refuse to serve or if his office shall become vacant, the commissioners of the highways of the town shall, by warrant, under their hands appoint some other person in his stead; and the overseer so appointed shall have the same powers, be subject to the same orders and liable to the same penalties as overseers chosen at the town meeting.

§ 26. [NOTICE OF APPOINTMENT TO FILL VACANCY.] The commissioners making appointment, shall cause such warrant to be forthwith filed in the office of the town clerk, who shall give notice to the person appointed as in other cases.

§ 27. [PENALTY AGAINST OVERSEERS.] Every overseer of highways who shall refuse or neglect to perform any of the duties hereinbefore enumerated, or which may be lawfully enjoined on him by the commissioners of highways of his town, shall for every such refusal or neglect, forfeit the sum of ten dollars, to be sued for by the commissioners of highways of the town, and when recovered to be applied by them in making and improving the roads and bridges therein.

§ 28. [NOTICE TO PERFORM ROAD LABOR.] It shall be the duty of overseers of highways to give at least three days notice, either verbally or by leaving a written notice at their place of residence, to all persons assessed to work on highways, and residing within the limits of their respective districts, of the time and place when and

where they are to appear for that purpose, and with what implements; but no person, being a resident of the town, shall be required to work on any highway other than in the district in which he resides, except he resides in a district on a town line, which district belongs to an opposite town, and unless he shall elect to work in same district where he has land; and in said case he may, with the approbation of the commissioners of highways, apply the work assessed in respect to such land in the district in which the same is situated: *Provided*, if the overseers of highways fail to perform their duty, the commissioners of highways shall have power to perform such duties, or cause the same to be performed, under such rules as they may prescribe.

§ 29. [DAYS TO BE WORKED—COMMUTATION.] Every person liable to work on the highways shall work the whole number of days for which he shall have been assessed; but every such person, other than an overseer of highways, may elect to commute for the same, or for any part thereof at the rate of one dollar per day; in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside, to be applied and expended by such overseer in the improvement of the roads and bridges in the same district.

§ 30. [PAYMENT OF COMMUTATION.] Any person intending to commute for his assessment, or any part thereof, shall, within three days after he shall be notified to appear and work on the highways, pay the commutation money for the work required of him by such notice; and the commutation shall not be considered as complete until such money be paid.

§ 31. [TEAMS MAY BE REQUIRED.] Every overseer of highways shall have power to require a team or a cart, wagon or plow, with a pair of horses or oxen, and a man to manage them, for any person having the same within his district, who shall have been assessed two days or more, and who shall not have commuted for his assessment; and the person furnishing the same, upon such requisition, shall be entitled to a credit of two days for each days service therewith.

§ 32. [SUBSTITUTE.] Every person assessed to work on the highways, and named to work, may appear in person, or by an able-bodied man as a substitute, and the person or substitute shall actually work eight hours in each day, under a penalty of twenty-five cents for every hour such person or substitute shall be in default, to be imposed as a fine on the person assessed.

§ 33. [IDLERS, ETC.—PENALTY.] If any person, after appearing, remain idle, or not work faithfully, or hinder others from working, such offender shall, for every offense forfeit to the town the sum of two dollars.

§ 34. [PENALTY FOR NEGLECT, ETC., TO APPEAR.] Every person so assessed and duly notified, who shall not commute, and who shall refuse or neglect to appear, as above provided, shall forfeit to the town, for every days refusal or neglect, the sum of two dollars (\$2.00). If



he was required to furnish a team, carriage, man or implement, and shall refuse or neglect to comply, he shall be fined as follows:

*First.*—For wholly failing to comply with such requisition, four dollars (\$4.00) for each day.

*Second.*—For omitting to furnish a pair of horses or oxen, one dollar and fifty cents (\$1.50) for each day.

*Third.*—For omitting to furnish a man to manage the team, two dollars (\$2.00) for each day.

*Fourth.*—For omitting to furnish a wagon, cart or plow, seventy-five cents (75-100) for each day.

§ 35. [COMPLAINT OF OVERSEER.] It shall be the duty of every overseer of highways, within six days after any person assessed and notified shall be guilty of any refusal or neglect, for which a penalty or fine is prescribed in this act, unless a satisfactory excuse shall be rendered to him for such refusal or neglect, to make complaint, on oath, to any justice of the peace of the county: "*Provided*, if the overseers of highways fail to perform their duty, as prescribed in this section, the commissioners of highways shall have power to perform such duties."

§ 36. [SUMMONS.] The justice to whom such complaint shall be made shall forthwith issue a summons, directed to any constable of the county, requiring him to summon such delinquent to appear within five days before such justice, according to law, for such refusal or neglect.

§ 37. [TRIAL—EXECUTION—NO EXEMPTION.] On the day of trial the justice shall proceed to hear and determine the case according to law, for the offense complained of, and shall forthwith issue an execution under his hand and seal, directed to any constable of the county where such delinquent shall reside, commanding him to levy such fine, with the costs of the proceeding, of the goods and chattels of such delinquent. No personal property shall be exempt from levy of attachment or execution when the judgment is for commutation of road or street labor; *Provided*, the court rendering the judgment shall find that the same is for road or street labor, which finding shall be expressed on the record of said judgment and indorsed upon the execution when issued.

§ 38. [COLLECTION OF EXECUTION.] The constable to whom such execution shall be delivered, shall forthwith collect the moneys therein mentioned. He shall pay the fine, when collected, to the justice of the peace who issued the execution, who is hereby required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is overseer.

§ 39. [APPLICATION OF FINE.] Every fine collected for refusal or neglect to appear and work on the highways, shall be set off against his assessments, or personal labor tax, upon which it was founded, estimating every two dollars collected as a satisfaction for one days work.

§ 40. [EXCUSE NOT TO EXEMPT FROM LABOR.] The acceptance by an overseer, of any excuse for refusal or neglect shall not, in any case, exempt the person excused from commuting for or working the whole number of days, for which he shall have been assessed during the year.

§ 41. [NOTICE OF ROAD TAX—TAX TO BE RECEIVED IN LABOR OR MONEY.] Every overseer of highways shall give at least three days notice to each person residing in his district, against whom a land or personal property road tax is assessed, either personal or in writing, left at his usual place of abode of the time when and the place where he may appear and pay his road taxes in labor and with what implements; and he may require of all persons appearing to pay their taxes in labor to furnish a spade, shovel, axe or hoe, and if any such person be the owner of a team, plow, wagon, cart or other implement useful for working the highways, he may require such person to furnish any of them if his road taxes are not less than three dollars. And every such person may appear at the time and place and with such implements and teams as the overseer in his notice shall have required, and work in person or by an able-bodied substitute; and every such person who shall so appear and work, agreeable to the directions of such overseer of the highways in his district shall be credited on his road tax one dollar and twenty-five cents for every day, he shall actually work eight hours and at that rate for less time, and twenty-five cents a day for every wagon or plow, and one dollar a day for each yoke of oxen, and one dollar and twenty-five cents a day for each span of horses or mules, he shall furnish agreeably to the requirements of said overseer: *Provided*, that any person may elect to pay such tax to the overseer in money: *Provided, further*, if the overseers of highways fail to perform their duty, the commissioners of highways shall have power to perform such duties, or cause the same to be performed under such rules as they may prescribe.

§ 42. [RECEIPT.] It shall be the duty of the overseer of highways when such land tax has been paid, either in money or labor, to write the word "paid" distinctly against each name or tract on his list, on which the same has been paid, and give a receipt for the same, whether paid in labor or money, when demanded.

§ 43. [DELINQUENT ROAD TAX—RETURN.] Every overseer of highways shall deliver to the supervisor of his town, and in Cook county to the county board, at least five days previous to the annual meeting of the board of supervisors, the lists furnished by the commissioners of highways, containing the land and personal property road tax, with an affidavit thereto, sworn to before the supervisor of the town, or some justice of the peace of the county, that on all tracts of land on such list, opposite which the word "paid" is written, such tax is paid, and that on all tracts of land on such list, opposite which the word "paid" is not written, such tax is due and remains unpaid, according to the best of his knowledge and belief.

§ 44. [PENALTY FOR NEGLECT TO RETURN.] If any overseer shall refuse or neglect to deliver such list to the supervisor, as provided in the last preceding section, or shall neglect or refuse to make the

affidavit, as therein directed, he shall, for every such offense, forfeit the sum of five dollars, and also the amount of taxes remaining unpaid, to be recovered by the commissioners of highways of the town, to be applied by them in improving the roads and bridges of such town.

§ 45. [WHEN ROAD LABOR TO BE WORKED OUT.] It shall be the duty of every overseer of highways to have at least three-fourths of the road labor assessed in his district, worked out or actually expended on the highways, previous to the first day of September in every year.

§ 46. [OVERSEER'S ANNUAL RETURN.] Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected or appointed, render, under oath, to one of the commissioners of highways of the town, an account in writing containing.—

*First.*—The names of all persons assessed to work on the highways in the district to which he is overseer.

*Second.*—The names of all those who have actually worked on the highways, with the number of days they have actually worked.

*Third.*—The names of all those who have been fined, and the sums in which they have been fined.

*Fourth.*—The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by him.

*Fifth.*—The amount of uncollected road tax which he has returned to the supervisors of the town, as required in section forty-three of this act.

§ 47. [ACCOUNT—MONEYS PAID TO SUCCESSOR.] Every such overseer shall also, then and there, render an account, in writing, of all moneys in his hands by virtue of his office, and shall also pay over the same to his successor in office.

§ 48. [PENALTY FOR NEGLECT.] If any overseer shall refuse or neglect to render such account, or if, having rendered the same, he shall refuse or neglect to pay any balance which may then be due from him, he shall, for every such offense, forfeit the sum of five dollars, to be recovered, with the balance of the moneys remaining in his hands, by the commissioners of highways of the town, and to be applied in making and improving the roads and bridges. It shall be the duty of the commissioners to prosecute for such penalty, in every instance of such refusal or neglect.

§ 49. [SUPERVISORS TO LAY DELINQUENT LIST BEFORE COUNTY BOARD.] It shall be the duty of the supervisors of the several towns to receive the list of the overseers of highways when delivered, pursuant to section forty-three of this act, and to lay the same before the board of supervisors of the county.



§ 50. [LEVY OF DELINQUENT TAX.] It shall be the duty of the board of supervisors, and in Cook county the county board, to cause the amount of arrearages of the road tax returned by the overseer of highways to the supervisors, as provided in section forty-three of this act, to be levied on the lands returned, and to be collected in the same manner that other taxes of the county are levied and collected, and to order the same, when collected, to be paid over to the commissioners of highways of the town, except such portion of such tax as is heretofore directed to be paid to the authorities of incorporated villages, towns and cities, to be by them applied to the construction of roads and bridges.

§ 51. [COMPENSATION OF OVERSEERS.] Each and every overseer of highways shall be entitled to one dollar and twenty-five (\$1 25) cents, per day for every day he is necessarily employed in the execution of the duties of overseer, exceeding the amount of his highway labor and road tax, the number of days to be accounted to and audited by the commissioners of highways: *Provided*, that the number of days to be audited shall be left discretionary with the commissioners of highways.

§ 52. [WHEN ROAD TAX MAY BE COLLECTED IN MONEY ONLY.] The legal voters of any township in the state, in counties where township organization has been or may hereafter be adopted, may by a majority vote, at their annual town meeting, provide that thereafter the road tax assessed by the commissioners of highways, under the provisions of this act be collected in money only. *Provided*, the legal voters of any township shall, by a majority vote, decide to pay their road tax in money, the commissioners of highways of any township so voting, are hereby authorized to contract for the construction and repairing of roads, the building and repairing of bridges, in their respective towns; and they shall let such contracts by a public letting, on the first Monday of May, A. D. 1880, and on the first Monday of May in each and every year thereafter, to the lowest responsible bidder, upon proper notice being given, by posting copies of such notices in at least ten public places in their town, not less than ten days before the time of such public letting: *Provided*, the notices shall specify the amount and kind of work to be done, and the time in which it shall be completed: *Provided*, so much of this section as relates to the letting of contracts, shall not be construed so as to prevent the letting of any contract at any other time than the first Monday of May, when necessity requires it, or, if the commissioners of highways deem it to be to the interest of their town, they may, to an amount not exceeding twenty-five dollars, privately contract with persons, as they deem best, for putting and keeping roads and bridges in repair, but in no case shall such contracts exonerate such commissioners from liability for failure to keep such roads and bridges in repair.

§ 53. [PLAT OF ROAD DISTRICTS.] The town clerk of each town shall, on or before the first day of September next, and annually thereafter (if the boundary line be changed,) furnish to the county clerk a certified plat of the several road districts of his town.

§ 54. [COUNTY CLERK TO DESIGNATE DISTRICT ON TAX BOOK.] In all counties acting under township organization, the county clerk, in extending district road tax upon the tax books, shall designate to what district said tax belongs.

§ 55. [ABSTRACT OF TAX DUE DISTRICTS.] It shall be the duty of county and township collectors to make out an abstract of the amount of district road tax due to each district of the respective townships, and deliver the same to the treasurer of the commissioners of highways.

§ 56. [TAX TO BE PAID TO DISTRICTS.] The treasurer of the commissioners of highways shall pay over the district road tax according to the abstracts as furnished above, upon the written orders of the various overseers of roads for work done in their respective districts, when said orders are approved, in writing, by a majority of said commissioners.

§ 57. [DESTROYING, ETC., GUIDE-BOARDS, ETC.] For destroying or defacing any guide-board, post or mile-stone, or any notice or direction put upon any bridge or otherwise, the offender shall forfeit a sum not less than three dollars, nor more than fifty dollars.

§ 58. [INJURING OR OBSTRUCTING ROAD.] If any person shall injure or obstruct a public road by falling a tree or trees in, upon or across the same, or by placing or leaving any other obstruction thereon, or by encroaching upon the same with any fence, or by plowing or digging any ditch or other opening thereon, or by turning a current of water so as to saturate or wash the same, or shall leave the cuttings of any hedge thereon, for more than five days, shall forfeit for every such offense a sum not less than three dollars, nor more than ten dollars, and in case of placing any obstruction on the highway, an additional sum of not exceeding three dollars per day for every day he shall suffer such obstruction to remain after he has been ordered to remove the same by any of the commissioners of highways, complaint to be made by any person feeling himself aggrieved: *Provided*, this section shall not apply to any person who shall lawfully fell any tree for use, and will immediately remove the same out of the road, nor to any person through whose land a public road may pass, who shall desire to drain his land, and shall give due notice to the commissioners of such intention: *And, provided, further*, that any commissioners or overseers of highways, after having given reasonable notice (to the owners) of the obstruction, or person so obstructing, or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road aforesaid, to be collected by said commissioners before any justice of the peace having jurisdiction.

§ 59. [INJURING OR DESTROYING SIDEWALK, BRIDGE, ETC.] If any person shall purposely destroy or injure any sidewalk, public bridge, culvert or causeway, or remove any of the timber or plank thereof, or obstruct the same, he shall forfeit a sum not less than three nor more

than one hundred dollars, and shall be liable for all damages occasioned thereby, and all necessary costs for rebuilding or repairing the same.

§ 60. [SUITS.] All suits for the recovery of any fine or penalty under this act shall be brought in the name of the town in which the offense is committed, before any justice of the peace or police magistrate within the town or county, who shall have jurisdiction in such cases to the extent of their jurisdiction in other cases; and it shall be the duty of commissioners of highways to seasonably prosecute for all fines and penalties under this act; but in case of a failure of said officers to so prosecute, complaint may be made by any person: *Provided*, said person shall, before bringing said suit in the name of the town, give a bond for costs, as is provided for in the case of non-residents.

§ 61. [APPLICATION OF FINES.] All fines recovered under the provisions of this act, unless otherwise provided, shall be paid over to the commissioners of highways of the town where the offense is committed, to be expended upon the roads and bridges in the town.

§ 62. [SIDEWALKS—TREES—FENCING HEDGE.] It shall be lawful for the owner or occupants of land bordering upon any public road, to build sidewalks not to exceed six feet in width, and to plant shade and ornamental trees along and in such road, at a distance not exceeding one-tenth of the legal width of the road from its margin; and also to erect and maintain a fence, so long as shall be actually necessary for the purpose of raising a hedge on said margin, a distance of four feet from and within said marginal lines.

§ 63. [FARM CROSSING UNDER ROAD.] Any person owning, using, or occupying lands on both sides of any public highway, shall be entitled to the privilege of making a crossing under said highway, for the purpose of letting his cattle and other domestic animals cross said road: *Provided*, said person shall erect at his own expense, a good and substantial bridge, with secure railings on each side thereof, and build an embankment of easy grade, on either side of said bridge; said bridge not to be less than sixteen feet wide, and to be approved by the commissioners of highways of the town in which said bridge is built, and the same to be kept constantly in good repair by the owner or occupant of said land, the construction subject always to the consent and approval of the commissioners of highways of said town: *And, provided, further*, that, in case such crossing is made on any water way or natural channel for water, and where a culvert or bridge is maintained as required for road purposes, said owners or occupants shall not be required to pay for or construct any more of said crossing, than the additional cost of such crossing over and above the necessary cost of a suitable culvert or bridge for road purposes at such place.

§ 64. [WHEN OWNER MAY CONNECT FENCE, BRIDGE, ETC.] And where any bridge on a public road is constructed over a stream or body of water, where the depth or current of water, or the nature of the bank or banks of such stream or body of water is such as to render a fence



on the marginal line of the public road impracticable or very expensive to construct and keep in repair, the owner of the land bordering on the public road shall have the right to connect the road fence on either or both banks of the stream or body of water, to said bridge or any pier or abutment thereof, or to any embankment or timber approach to said bridge: *Provided*, that no necessary ford across said stream or body of water shall be permanently obstructed thereby: *And, provided, further*, that any such connecting fence shall be constructed by the consent and under the direction of the commissioners of highways of the town in which the bridge may be located.

§ 65. [WIDTH OF ROADS.] All public highways, laid out by order of the commissioners of highways or supervisors, on appeal shall be not less than fifty feet wide, nor more than sixty feet wide: *Provided*, the commissioners may lay out roads not less than forty feet wide nor more than sixty feet wide, when so prayed for by the petitioners, if such road does not exceed two miles in length: *And, provided, further*, that all public roads shall be opened within five years from the date of the filing of the order laying out the same or be deemed vacated.

§ 66. [NOTICE AGAINST FAST DRIVING ON BRIDGE.] The commissioners of highways of each town may, when they shall deem it advisable, put up and maintain, in conspicuous places, at each end of any bridge in such town, maintained at the public charge, a notice with the following words, in large characters: "Five dollars fine for riding or driving on this bridge faster than a walk."

§ 67. [PENALTY FOR FAST DRIVING ON BRIDGE.] Whoever shall ride or drive faster than a walk, over any bridge upon which notice shall have been placed and shall then be, shall forfeit to the town, for every such offense the sum of five dollars.

§ 68. [DITCHES, ETC.] The commissioners of highways of the several towns are hereby authorized to enter upon any land adjacent to any highway in their town, for the purpose of opening any ditch, drain, necessary sluice or water course, whenever it shall be necessary to open a water course from any highway to the natural water courses, and to dig, open and clear ditches, upon said land for the purpose of carrying off the water from said highways, or to drain any slough or pond on said highway: *Provided*, that unless the owner of such land, or his agent, shall first consent to the cutting of such ditches, the commissioners shall apply to any justice of the peace in the county in which such road is situated, for a summons directed to any constable of said county, commanding him to summon the said owner to appear before the said justice, at a time and place specified in such summons, not less than five nor more than fifteen days from the date thereof, for the purpose of having the damage assessed, which such owner may sustain by reason of the digging or opening of such ditches or drains. The said summons shall be under the hand of the said justice; and be served in the same manner as a summons is now served in civil actions before justices of the peace. On the return of such summons, *venire* shall be issued for a jury of twelve persons, who shall be summoned, and whose competency shall be determined, as in other cases in the trial of civil actions before justices of the

peace; which jury shall assess such damages and render a verdict therefor, which shall be final and conclusive, of the amount of damages sustained by such person, unless such person shall, within the time allowed now by law, perfect an appeal, and the amount so awarded shall be paid before the commissioners of highways shall be warranted and empowered to enter such lands, and dig, open and clean such drains, ditches and water courses, as aforesaid, for the purposes contemplated in this act; and the commissioners of highways are further authorized to use and employ the road labor and money of their town for such purposes: *Provided*, that in case the owner of said lands is a non-resident; service may be had by leaving a copy with the occupant or agent, or by notice in the same manner as prescribed in section (81) of this act.

§ 69. [ALTERING, WIDENING, VACATING AND LAYING OUT ROADS.] The commissioners of highways may alter, widen or vacate any road, or lay out any new road in their respective towns, when petitioned by any number of freeholders, not less than twelve, residing in such town, within three miles of the road so to be altered, widened, vacated or laid out.

§ 70. [PETITION.] Said petition shall set forth, in writing, a description of the road, and what part thereof is to be altered, widened or vacated, and if for a new road, the names of the owners of lands, if known, and if not known, it shall be so stated, over which the road is to pass, the points at or near which it is to commence, its general course, and the place at or near where it is to terminate.

§ 71. [TIME OF MEETING TO BE FIXED—NOTICE.] Whenever the commissioners of highways shall receive any such petition, they shall fix upon a time when and where they will meet to examine the route of such road, and to hear reasons for or against the altering, widening, vacating or laying out the same, and they shall give at least ten (10) days notice of the time and place of such meeting, by posting up notices in three (3) of the most public places in the township, in the vicinity of the road to be widened, altered or vacated.

§ 72. [ADJOURNMENT—DECISION—PROCEEDINGS THEREON.] The commissioners may, by public announcement, and by the posting of a notice at the time and place named for the first meeting, adjourn the meeting from time to time, but not for a longer period than twenty days in all; and shall, at the first or such adjourned meeting, within said twenty days, decide and publicly announce whether they will grant or refuse the prayer of the petition, and shall endorse upon, or annex to the petition, a brief memorandum of such decision, to be signed by the commissioners. Such decision shall be subject to revocation, in case the prayer of the petition is granted, in the manner hereinafter provided. In case the commissioners refuse to grant the prayer of the petition, they shall, within ten days thereafter, file the same, so indorsed, or with such decision annexed thereto, in the office of the town clerk.

§ 73. [IN CASE OF VACANCY OF ROAD.] If the petition is simply for the vacation of a road, and the commissioners of highways, or a

majority of them, shall at such meeting, decide that the prayer of the petitioners should be granted, they shall order such road to be vacated—a copy of which order, together with the petition, shall be by them filed with the town clerk, such order to be so filed within ten days after the date of such decision.

§ 74. [WHEN FOR LAYING OUT, ALTERING OR WIDENING ROAD.] If such petition is for the establishment of a new road, or the alteration or widening of an existing road, and the commissioners of highways, or a majority of them, shall be of the opinion that the prayer of the petitioners should be granted, they shall cause a survey and plat of such road to be made by a competent surveyor, who shall report such survey and plat to said commissioners, giving the courses and distances, and specifying the land over which said road is to pass—in which they may make such changes between the termini of the road described in the petition, as the convenience and interest of the public in their judgment, may require.

§ 75. [DAMAGES TO BE FIRST ASCERTAINED.] They shall also, before they order any road to be established, altered, widened, or vacated, ascertain, as hereafter provided, the aggregate amount of damages which the owner or owners of land over which such road is to pass, shall be entitled to, by reason of the location, alteration or vacation of such road: *Provided, however*, that in case an appeal is taken from the assessment of damages before the justice of the peace, the commissioners may, in their discretion, make an order laying out, widening, altering or vacating such road, either before or after such appeal is determined, in the manner hereinafter provided.

§ 76. [DAMAGES MAY BE AGREED UPON, ETC.] The damages sustained by the owner or owners of the land, by reason of the establishment, alteration, widening or vacation of any road, may be agreed upon by the owners of such lands, if competent to contract and the commissioners of highways, or they may be released by such owners,—in which case the agreement or release shall be in writing, and shall be filed and recorded with the copy of the order establishing or altering such road, in the town clerk's office, and shall be a perpetual bar against such owners, their grantees and assigns, for all further claims for such damages.

§ 77. [SUMMONING JURY TO ASSESS DAMAGES.] In case such damages are not released or agreed upon, as in the preceding section specified, the commissioners of highways shall, within twenty (20) days from the date of the meeting at which it was decided to grant the prayer of the petition, make a certificate that they are about to establish widen, vacate or alter a public road, describing such road, vacation, widening or alteration, and the land over or on which such road is to be established, altered, widened or vacated, and naming the owners of such land, if known, and if not known, stating the fact, and asking for a jury to assess the damages of such owners, and shall present such certificate to some justice of the peace of the county, who shall summon a jury of twelve (12) persons, at least one-half of whom shall be residents of the town in which the



proposed road is located, having the qualifications of jurors, to appear before such justice of the peace at a time to be fixed by him, within ten (10) days from a time such certificate was presented to him, to assess such damages.

§ 78. [NOTICE TO OWNERS.] The commissioners of highways shall also notify each and every owner of land—if known, and a resident of the county—whose damages are to be assessed, that they will apply to some justice of the peace of the county (giving the time when and the place where) to have a jury impaneled to assess such damages.

§ 79. [MANNER OF SELECTING A JURY.] Upon the presentation of such certificate by the commissioners of highways, the justice of the peace shall forthwith issue a *venire* directed to any constable of the county, to summons twelve persons having the qualifications of jurors, to appear at such time and place as may be designated for the trial of such cause, whose competency shall be determined the same as in other civil cases before justices.

§ 80. [CHALLENGE TO JURORS.] At the trial of the case, either party shall have the right of challenge as in other cases; and any deficiency in the number of jurors, from whatever cause, shall be supplied by summoning other persons residing in the township, or in an adjoining township, in the same manner as in a civil case. Such justice of the peace shall notify the owners of such land mentioned in such certificate to appear at the same time before such justice to prove their damages.

§ 81. [NOTICE TO UNKNOWN OWNERS.] In case it shall appear either from the certificate of the commissioners, the affidavit of any person, or the return of any officer to whom the notice may be delivered for service, that there is an unknown owner or owners who cannot be found and served within the county, such justice shall also cause notice to be posted in three of the most public places in the vicinity of such proposed road or alteration, at least six days before the time fixed for the appearance of such jury, stating when such jury is to be impaneled by him, and describing the road to be established, altered, widened or vacated as petitioned for, and the lands for which damages are to be assessed.

§ 82. [SERVICE OF NOTICE.] The notice to such owners of lands may be served by any constable or one of the petitioners, or other person of lawful age, at least five days before the time of appearance. If any of such owners is an infant, such summons shall be served by delivering a copy to the infant or its guardian, if any; if no guardian, the person with whom he or she resides. If any owner is a lunatic, or habitual drunkard having a conservator, or insane, by delivering a copy to his conservator, if any; if any such owner is a married woman, by delivering a copy to her.

§ 83. [OATH OF JURY—TRIAL—CHANGE OF VENUE.] The jury shall appear before and be sworn or affirmed by such justice, faithfully and impartially to assess the damage of each of the owners specified in such certificate, or those of them whose claims are then to be adjusted

according to law, to the best of their judgment and understanding; and all parties in interest shall be entitled to subpoenas and other writs and papers, and the trial shall be conducted as in other civil cases: *Provided*, changes of venue may be granted, if applied for before the commencement of the trial, under the same rules and regulations as other civil causes before justices of the peace.

§ 84. [TRIAL—VERDICT—JUDGMENT.] The jury shall hear such lawful evidence touching the question of such damages, as may be presented to them; and shall also, on request of a majority of the road commissioners or owners of lands whose damages are to be determined, in a body, visit and examine the proposed location, alteration, widening or vacation of such road, and the lands to be taken and affected thereby, and make a written verdict, specifying the amount of damages, if any, which each such owner shall recover and return the same to such justice, to be by him entered on his docket, in the nature of a judgment, to be paid by such commissioners, together with the costs of such suit, in case they shall finally determine, to establish, alter, or widen or vacate such road, and the money therefor shall be paid by the town, out of the funds in the hands of the treasurer of the commissioners of highways, raised for road and bridge purposes: *Provided*: that in estimating the damages, the jury may consider the benefits conferred, or may disregard such benefits; but no benefits enjoyed in common by the owners of surrounding property shall be considered in estimating damages.

§ 85. [SEPARATE ASSESSMENTS—CONTINUANCES, ETC.] *Provided*, that when there are several such owners, the jury may assess the damages of one or more, or all of them, at the same time, or they may assess such damages at different times, or there may be different juries and trials at different times, for different owners, if any owner shall demand a separate trial, and any such assessment of damages may be continued from time to time for good cause, with the like effect as continuances in other cases before justices of the peace.

§ 86. [FINAL DECISION BY COMMISSIONERS—NOTICE.] Within thirty days after the total amount of damages shall have been ascertained, either by release or agreement of the parties, or by assessment before a justice of the peace and a jury, in the manner hereinbefore provided, the commissioners shall hold a meeting to finally determine upon the laying out, altering, widening or vacation of such road, of which meeting said commissioners shall give public notice, by causing not less than three notices thereof to be posted in public places within the town, at least five days prior thereto.

§ 87. [COMMISSIONERS MAY REVOKE PROCEEDINGS.] In cases where the damages are not wholly released or agreed upon, and the commissioners shall be of the opinion that the damages assessed by the jury are manifestly too high, and that the payment of the same would be an unreasonable burden upon the taxpayers of the town, the commissioners may revoke all proceedings had upon the petition by a written order to that effect. And such revocation shall have the effect to annul all such proceedings and assessments, releases and agreements, in respect to damages growing out of the proceedings upon the petition.

§ 88. [ORDER TO ALTER, WIDEN, OR LAY OUT ROAD—PLAT—FILING PAPERS—RECORDING.] In case the commissioners shall not revoke such prior proceedings, they shall make an order to be signed by them, declaring such road so altered, widened or laid out a public highway, and which order shall contain or have annexed thereto a definite description of the line of such road, together with a plat thereof. The commissioners shall, within ten (10) days from the date of such order, cause the same, together with the report of the surveyor, the petition and releases or agreements in respect to damages, to be deposited and filed in the office of the town clerk, who shall note upon such order the date of such filing. It shall be the duty of such clerk, after the time for appeal to supervisors has expired, and in the case of such appeal, after the same shall have been determined, in the prayer of the petition is granted, to record such order, together with the plat of the surveyor, in a proper book to be kept for that purpose.

§ 89. [WHEN DAMAGES RELEASED OR AGREED UPON.] In cases where the damages claimed by the land-owners for the right of way is released, or is agreed upon between the land owners and the commissioners, the commissioners, may, at their first meeting, or at any adjourned meeting, examine the route of the road, and cause a survey thereof to be made, and make their order establishing, altering, widening or vacating the road, according to the prayer of the petition, and return the same within the time and in the manner specified in this act.

§ 90. [INDUCEMENT MAY BE OFFERED.] Any person or persons interested in the establishment, alteration, widening or vacation of any road in this State, are hereby authorized to offer inducements to the commissioners of highways, for the establishment, alteration, widening or vacation of any such road, by entering into contract with said commissioners, conditioned upon such establishment, alteration, widening or vacating, to pay money or any other valuable thing to the town, for the benefit of the road and bridge funds of the same, or to perform any labor, or to construct any road, bridge or culvert on any road which said person or persons desire to have established, widened or altered. And such contracts in writing, made with said commissioners, shall be deemed good and valid in law, and may be enforced by said commissioners or their successors in office, before any court having jurisdiction.

§ 91. [TOWN CLERK'S RECORD, ETC.—EVIDENCE—EFFECT OF SAME.<sup>1</sup>] The record of the town clerk, or a certified copy of such record and papers, relating to the establishment, location, alteration, widening or vacation of any road, shall be *prima facie* evidence in all cases that all the necessary antecedent provisions have been complied with, and that the action of the commissioners of highways, or other persons and officers in regard thereto, were regular in all respects.

§ 92. [PRIVATE ROADS.] Roads for private and public use of the width of three rods, or less, may be laid out from one dwelling or plantation of an individual to any public road, or from one public road to another, or from a lot of land to the highway, on petition to the



commissioners of highways, by any person directly interested. The commissioners, on receiving such petition, shall have power to lay out the road as asked for therein, to which end they shall proceed and examine into the merits of the case, and shall be governed in their proceedings by the rules and regulations prescribed in this act in relation to public roads. The jury shall consider the damages that may result to parties from said proposed road, and shall assess the damages to each individual owner of lands affected thereby. The amount of such damages shall be paid by the persons benefitted thereby, to the extent and in proportion that they are benefitted, to be determined and declared by the jury. The remainder of the amount of damages over and above that to be paid by the parties as aforesaid, shall be paid by the town as in other cases. The amount of damages to be paid by individuals, shall be paid to the parties entitled thereto, before the road shall be opened for use. An appeal may be taken on the question of the propriety and necessity of such road as in other cases.

§ 93. [LIMITATION OF TIME TO OPEN.] If such private road or cartway shall not be opened by the petitioners or their assigns within two years, from the time of making the order for the location of the same, such order shall be regarded as rescinded.

§ 94. [CROPS—FENCES.] When such private road or cartway is proposed to pass over inclosed lands, the owners of such lands shall have a reasonable time not exceeding eight months, to be designated by the commissioners of highways, to harvest crops and remove fences, which may be on such lands before such road or cartway shall be opened.

§ 95. [PAYMENT FOR WORK ON PRIVATE ROADS.] The commissioners of highways may, in their discretion, pay persons who live on or have private roads which are used by the public, for work done on such roads; but in no case shall they be allowed more than the amount of their road tax for the year in which the work is done.

§ 96. [ROADS ON TOWN AND COUNTY LINES.] Public roads may be established, altered, widened or vacated on township or county lines, or from one township into another, in the same manner as other public roads, except that in such case the petition shall be presented to the commissioners of highways of each town interested, said petition to be as in other cases, and signed by not less than twelve freeholders residing in either county, within three miles of the road so to be altered, widened, located or laid out; whereupon it shall be the duty of the commissioners of highways of the several towns to meet, and act as one body, in the same time and manner as in other cases, in considering the petition, viewing the premises, adjusting damages, and making all orders in reference to such proposed road alteration, widening or vacation, and a majority of all such commissioners must concur in all such orders; and a copy of all final orders and plats and papers shall be filed and recorded in each of the counties and towns interested.

§ 97. [ALLOTMENT OF REPAIR, ETC.—DIVISION OF EXPENSE, ETC.] The commissioners of highways shall also, in case a new road is established, allot to each of such towns the part of such road which

such town shall open and keep in repair, and the part so allotted shall be considered as wholly belonging to such town. They shall also divide the expenses and damages which may accrue from such location, widening or alteration, and if they cannot agree, they shall refer the matter to three disinterested freeholders, as arbitrators whose decision shall be final.

§ 98. [APPEAL.] Any person or persons interested in the decision of the commissioners of highways, in determining to or in refusing to lay out, alter, widen or vacate any road, or revoking any previous order or decision relative to any road, or from the verdict of any jury in assessing damages in opening, altering or vacating any road, may appeal from such decision to three supervisors of the county, outside of the town in which such road or proposed road is located, by giving a written notice of such appeal to said commissioners of highways, and to at least three of the petitioners, and also to the same parties, a notice when and where such appeal will be tried, at least three days before such trial, within ten days after such decision has been filed in the office of the proper clerk; and shall also present a written petition to some justice of the peace of the county, asking for an appeal, and stating on what grounds such appeal is taken.

§ 99. [TRIAL OF APPEAL—POWER OF SUPERVISORS APPEALED TO.] It shall be the duty of the justice of the peace to cause to be summoned three supervisor of the county to hear such appeal; and said supervisors shall fix upon a time and place when said appeal will be heard by them; which place shall be in the town where the road is located; and upon such appeal the said supervisors shall have the same power and authority that is by this act conferred on the commissioners of highways, not only in regard to the laying out, altering, widening or vacating any road, but shall have the same power to cause a jury to be called to assess damages, whenever the state of the proceedings require it, and the supervisors can not agree with the owners of the land in regard to the same.

§ 100. [REPORT OF DECISION—COMPENSATION—DECISION FINAL.] And they shall make a report of their proceedings and decision in the case, and in like manner, that is by this act, required by the highway commissioners, and shall be entitled to the same compensation; and their decision shall be final in regard to laying out, altering, widening or vacating such road, or in refusing to do the same for one year after such decision.

§ 101. [CASES OF APPEAL—BOND.] Any parties taking an appeal from the award of the decision of the highway commissioners, or the verdict of the jury, shall pay the cost of such appeal, in case the award or the decision of the highway commissioners, or the verdict of the jury, is in all things sustained, and shall file a sufficient bond with the justice of the peace or town clerk, before taking such appeal, guaranteeing such payment in such case.

§ 102. [MAJORITY MAY DECIDE.] The decision of a majority of the supervisors in any appeal case shall be taken as the decision of said supervisors.

§ 103. [APPEAL WHEN ROAD IS ON TOWN OR COUNTY LINE.] When the commissioners of highways of one town disagree with the commissioners of highways of an adjoining town, in regard to the laying out of a new road, or the alteration, widening or vacation of an old road, on any county or town line, appeals may be taken from such decision in the same manner as set forth in section (98), of this act. *Provided*, that when such decision is in regard to a road on a county line, two supervisors and one commissioner of highways shall be selected from one county, and two commissioners of highways and one supervisor shall be selected from the other. The county from which the two supervisors shall be selected, shall be determined by the party or parties taking the appeal, and the justice of the peace shall issue his summons accordingly.

§ 104. [TOWN AND COUNTY LINE ROADS—HOW ALLOTTED—WHAT DEEMED SUCH.] All roads heretofore laid out upon town or county lines shall be divided, allotted and kept in repair in the manner as hereinbefore directed. Any public road that is or shall hereafter be laid out on a county or town line, shall be held to be a road on a county or town line, although, owing to the topography of the ground along said county or town line, or at the crossing of any stream of water, the proper authorities, in establishing or locating such road, may have located a portion of the same to one side of such county or town line.

§ 105. [STATE LINE ROADS.] Roads may be laid out and opened upon the line between this and any adjoining state, as provided in the preceding sections, whenever the laws of such adjoining state shall be applicable.

§ 106. [TOWN AND COUNTY LINE BRIDGES.] Bridges over streams which divide towns or counties, and bridges over streams on roads on county or town lines, shall be built and repaired at the equal expense of such towns or counties: *Provided*, that for the building and maintaining of bridges over streams near county or town lines, in which both are equally interested, the expense of building and maintaining any such bridges shall be borne equally by both counties or towns.

§ 107. [CONTRACTS IN REFERENCE TO SUCH BRIDGES.] For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the commissioners of highways of such adjoining towns or counties to enter into joint contracts, and such contracts may be enforced, in law or equity, against such commissioners jointly, the same as if entered into by individuals, and such commissioners may be proceeded against, jointly, by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges, or for any damages growing out of such neglect.

§ 108. [ENFORCEMENT OF CONTRACTS.] If the commissioners of highways of either of such towns, after reasonable notice, in writing, from



the commissioners of highways of any other such towns, shall neglect or refuse to build or repair any such bridge, when any contract or agreement has been made in regard to the same, it shall be lawful for the commissioners so giving notice to build or repair the same, and to recover, by suit, one-half (or such amount as shall have been agreed upon) of the expense of so building or repairing such bridge, with costs of suit and interest from the time of the completion thereof, from the commissioners so neglecting or refusing.

§ 109. [EFFECT OF JUDGMENT ON SUCH CONTRACT.] Any judgment so recovered against the commissioners of highways of either of such towns, shall be a charge on such town, unless the court shall certify that the neglect of (or) refusal of such commissioners was willful or malicious, in which case only such commissioners shall be personally liable for such judgment, and the same may be enforced against them in their personal and individual capacity.

§ 110. [COUNTY AID TO BUILD BRIDGE.] When it shall be necessary to construct or repair any bridge in any town, or to build a bridge over any stream between towns, or over streams on roads between towns in the same county, which would be an unreasonable burden to the same, the cost of which will be more than can be raised in one year by ordinary taxes for bridge purposes in such town, or one of such towns, the commissioners of highways of either town desiring to build such bridge shall present a petition to the county board of the county in which such town or towns is situated, praying for an appropriation from the county treasury to aid in the building constructing and repairing of such bridge, and such county board shall, when one-half the necessary funds have been provided for by the town authorities of either or both such town or towns, appropriate the other half: *Provided*, that all unexpended surplus of any appropriation they may be granted by the county under the provisions of this section shall be paid back into the treasury. And all funds provided to be raised under this section shall be expended by, and under the joint control of the commissioners of highways, of the town asking such aid, and two persons appointed by the county board of the county granting the same.

§ 111. [VOTE TO BORROW MONEY TO BUILD BRIDGE.] When it shall be necessary to build a bridge in any town which would require a larger sum of money to complete than is authorized to be raised by taxation, under the constitution upon a single year's assessment, the the commissioners of highways shall petition the supervisor of the town, to call a special town meeting to vote on the proposition "to borrow money to build a bridge," which said petition shall be signed by said commissioners in their official capacity, and by at least twenty-five freeholders of such town, and thereupon such petition shall be filed in the office of the town clerk of such town. Upon the filing of said petition, the supervisor shall order the town clerk, by an instrument in writing to be signed by him, to post up in four of the most public places in said town, notices of such special town meeting; which notice shall state the object, time and place of meeting, and the manner in which the voting is to be had, which shall be invari-

ably by ballot, and shall be "to borrow money to build a bridge," when the voter desires to vote in favor of that proposition, and "against the proposition to borrow money to build a bridge," when the voter desires to vote against said proposition. The special town meeting shall be held and returns thereof made in the same manner as other special town meetings, are now or may hereafter be provided by law; and if it shall appear that a majority of the legal voters voting at said election shall be in favor of said proposition, the supervisor and town clerk, acting under the direction of the commissioners of highways of said town, shall issue from time to time, as the work progresses, a sufficient amount in the aggregate of the bonds of said town for the purpose of building such bridge, said bonds to be of such denominations, bear such rate of interest, not exceeding eight per cent. upon such time, and be disposed of as the necessities and conveniences of said town officers require: *Provided*, that said bonds shall not be sold or disposed of for less than their par value, and such town shall provide for the payment of such bonds and the interest thereon by appropriate taxation.

§ 112. [RE-SURVEY AND PLAT OF ROADS.] Upon the petition of twelve legal voters, it shall be the duty of the commissioners of highways of each town, within a reasonable time, to employ a competent surveyor, and have any road or roads designated in such petition in their several towns re-surveyed, and plats thereof made, which plats and surveys shall be by them filed for record in the office of the town clerk: *Provided*, that this section shall not apply where the same has been already done, unless the exact location of such road is uncertain.

§ 113. [NEW ROAD NOT TO VACATE OLD ROAD, UNLESS, ETC.] The establishment of a new road on the route of a road already established according to law, shall not vacate the road previously established, unless such vacation is prayed for in the petition, and so declared in the order establishing the new road.

§ 114. [CONTRACT FOR BRIDGES.] The commissioners of highways of the several towns are hereby authorized to contract for the building and repairing of bridges in their respective towns, and they may let such contracts by a public letting to the lowest responsible bidder, upon proper notice being given by posting copies of such notice in at least three (3) public places in their town, not less than ten (10) days before the time of such public letting, or if they deem it to be to the interest of their town, they may, to an amount not exceeding twenty-five dollars, (\$25), privately contract with persons, as they shall deem best for putting bridges in good repair; but in no case shall such contracts exonerate such commissioners from liability for failure to keep such bridges in repair.

§ 115. [ORDERS RECEIVED FOR TAX.] *Provided*,—that the collector of taxes shall receive from any tax payer, in payment of said tax-payers road and bridge tax, any order of the commissioners of highways, on their treasurer, for work done on or material furnished for the construction or repairs of the highways or bridges, in any sum not to exceed the amount of such person's road and bridge tax then due.

§ 116. [REMOVAL OF FENCES.] Whenever a public road is ordered to be established or altered, according to the provisions of this act, which road shall pass through or on enclosed land, the commissioners of highways shall give the owner or occupant of such land sixty days notice in writing to remove his fences. If such owner or occupant does not remove his fence within sixty days after such notice the commissioners shall cause the same to be removed, and direct the road to be opened and worked, and such owner shall forfeit to such commissioners the sum of one dollar for every day he shall permit his fence to remain after the expiration of the said sixty days, and shall pay all necessary cost of removal, to be collected by said commissioners before any justice of the peace having jurisdiction.

§ 117. [COMPENSATION OF COMMISSIONERS.] The commissioners of highways shall receive for their services the sum of one dollar and fifty cents (\$1.50) per day for each day necessarily employed in the performance of their duties, the same to be audited by the town auditors and paid out of the town funds.

§ 118. [ROAD TO BE OPENED IN FIVE YEARS.] All highways laid out by order of the commissioners or supervisors, on appeal, shall be opened within five years from the time of laying out the same. If not opened within the time aforesaid the same shall be deemed to be vacated.

§ 119. [TAX TO BE COLLECTED IN MONEY.] The highway commissioners of each town shall, annually, ascertain, as near as practicable, how much money must be raised by tax on real and personal property for the making and repairing of bridges, the payment of damages by reason of the opening, altering, and laying out of new roads, the purchase of the necessary tools, implements and machinery for working roads; the purchase of the necessary material for building or repairing roads and bridges, the pay of the overseers of highways during the ensuing year; commencing on Tuesday next preceding the annual town meeting, which tax shall be extended on the tax books, according to the assessment of the previous year; and shall levy a tax on all the real and personal property in said town, not exceeding forty cents on the one hundred dollars; and they shall give to the supervisor of the township, and in Cook county to the county board, a statement of the amount necessary to be raised, and the rate per cent, of taxation, signed by said commissioners, or a majority of them, on or before the Tuesday next preceding the annual September meeting of the board of supervisors, or the county board of Cook county, who shall cause the same to be submitted to said board for their action at such September meeting of said board. *Provided*, that if the commissioners of highways, or any three legal voters, shall give notice, by posting notices in at least three of the most public places of the town, at least ten days before the annual town meeting, that a larger amount of money will be required for the purpose of constructing or repairing roads or bridges in their town than, can be realized from the real and personal property tax authorized by law, to be assessed by the commissioners, the legal voters present at such meeting may authorize an additional amount to be raised by tax, not exceeding forty cents on each one hundred dollars valuation, and said board shall cause the same to be extended on the tax books.



§ 120. [HOW TAX EXTENDED AND COLLECTED.] According to the amount certified as aforesaid, the county clerk, when making out the tax books for State and county taxes for the collector, shall extend the necessary tax in a separate column against each tax payer's name, or taxable property, as other taxes are extended, which shall be collected the same as state and county taxes.

§ 121. [CERTIFICATE OF TAX LEVIED.] It shall be the duty of the county clerk to make out and deliver to the treasurer of the commissioners of highways, a certificate of the aggregate amount of tax so levied and placed upon the tax books.

§ 122. [TAX PAID TO TREASURER OF COMMISSIONERS, EXCEPT, ETC.] The tax so collected shall be paid to the treasurer of the commissioners of highways, by the collector, as fast as the same is collected, except such rate per cent. as shall be allowed for collecting the same. *Provided*, that the commissioners of highways may, in their discretion, expend such funds upon roads and bridges at any place within their respective town; but when expended within the limits of any incorporated town, city or village, the same shall be done by and with the consent of the corporate authorities.

§ 123. [LIST OF TAX-PAYERS TO BE FURNISHED CLERK.] The commissioners of highways shall furnish to the clerk of the county court previous to the first day of October in each year, a list of tax-payers (alphabetically arranged) of each district.

§ 124. [REPEAL.] That an act entitled "An act in regard to roads and bridges," approved May 26, 1877, and in force July 1, 1877 so far as the same relates to counties under township organization, and also all other acts or parts of acts inconsistent herewith, be and the same are hereby repealed. *Provided*, that the repeal of said act shall not affect any suit or proceeding pending, or impair any right existing at the time this act shall take effect.

APPROVED May 28th, 1879.

#### DESTRUCTION OF NOXIOUS WEEDS.

§ 1. Cockle burr weeds, etc., to be destroyed. | § 2 Penalty for failing to comply.

AN ACT *requiring the destruction of the cockle-burr weed or plant.*  
*Approved May 31, 1879. In force July 1, 1879.*

SECTION 1. [COCKLE-BURR WEED; ETC., TO BE DESTROYED.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* The commissioners of highways in their respective towns, shall be required to destroy, or cause to be destroyed, all cockle-burr weeds or plants, before coming to maturity, that may be or grow in the highways of such town.

§ 2. [PENALTY FOR FAILING TO COMPLY, ETC.] The commissioners of highways, failing to comply with the provisions and requirements of section one of this act, shall be liable to a fine, of not less than five dollars nor more than twenty-five dollars for such offense, to be recovered in any proper form of action, before any justice of the peace in the county where such offense was committed, such fine when collected, to be paid to the treasurer of the highway commissioners in the town where the offense was committed, to be used as road money in such town.

APPROVED May 31st, 1879.

## LABOR ON STREETS.

AN ACT *providing for labor on the streets and alleys of all cities and villages in this State.*

§ 1. Labor on streets, etc.

§ 2. Fines and penalties.

SECTION 1. [LABOR ON STREETS, ETC.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the city council in all cities and the president and board of trustees in all villages in this State, may have power, by ordinance, to require every able bodied male inhabitant of any such city or village, above the age of twenty-one years, and under the age of fifty years (excepting paupers, idiots, lunatics, and such others as are exempt by law), to labor on the streets and alleys of any such city or village, not more than two (2) days in each year; but such ordinance shall provide for commutation of such labor at seventy-five cents per day.

§ 2. [FINES AND PENALTIES.] Any such city council or president and board of trustees of any such village shall have power, by ordinance, to provide such fines and penalties as may be necessary to enforce the provisions of this act.

APPROVED May 31st, 1879.

## TRAVEL ON BRIDGES IN CITIES, TOWNS, ETC.

§ 1. Penalty for fast driving, etc.

AN ACT *to regulate the manner of travel upon bridges, the whole or a part of which are owned or controlled by cities, villages and towns of this State, and to provide for the enforcing of the same.*

SECTION 1. [PENALTY FOR FAST DRIVING, ETC.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whoever shall ride or drive faster than a walk, over any bridge in this State, owned or controlled, either the whole or a part thereof, by any city, village or town of this State, shall, for each offense, be fined in a sum not exceeding ten dollars nor less than one dollar, *Provided*, that a notice shall be posted on such bridge, warning against riding, or driving, on such bridge faster than a walk, such fine to be recovered, with cost, before any justice of the peace or police magistrate of the county where the offense is committed, upon sworn complaint in writing upon which a warrant for the arrest of the offender shall issue, and it shall be the duty of every constable of the county, and every marshal, policeman and police constable, and all other officers of such city, village or town, owning or controlling the whole or in part such bridge, having the power to make arrests, when ever aforesaid offense is committed in the view of such officer or officers, to forthwith take in custody the person or persons so committing aforesaid offense, and bring him or them before any justice of the peace or police magistrate of the county, to be dealt with accord-

ing to law, and such officer so taking in custody such offender, or any officer of such city, village or town, owning or controlling the whole or a part of such bridge where such offense is committed, may make the complaint upon which warrant shall issue against the offender, all fines collected under this act, shall be paid into the common school fund of the county. WHEREAS, the law is inadequate for the protection of bridges which are owned or controlled, the whole or a part thereof, by cities, villages and towns of this State, therefore an emergency exists, and this act shall take effect from and after its passage.

APPROVED May 13th, 1879.

#### BRIDGES, ETC, OUTSIDE OF CITY LIMITS.

§ 1. Construction of ferries, etc      | § 2. Control by city.  
§ 3. Emergency.

*AN ACT to enable Cities and Villages to build, acquire and maintain Bridges and Ferries outside of their corporate limits and to control the same.*

SECTION 1. [MAY CONSTRUCT FERRIES AND BRIDGES.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That it shall be lawful for any city or village within this State to build or acquire by purchase, lease or gift, and to maintain, ferries and bridges, and the approaches thereto, not exceeding four acres of land for each ferry or bridge within the corporate limits, or at any point within five miles of the corporate limits of such city or village. That all such ferries and bridges shall be free to the public and that no toll shall ever be collected by any such city or village authority.*

§ 2. [CONTROL BY CITY.] Every bridge and ferry so owned or controlled by such city or village, and the approaches thereto, when outside the corporate limits, shall be subject to the municipal control and ordinances of such city or village, the same to all intents and purposes, and in effect as though such bridge or ferry and the approaches thereto, were situated within the corporate limits of such city or village, and in such case, the county may assist in the construction of said bridge, as is now provided by law.

§ 3. [EMERGENCY.] WHEREAS, Certain cities in this State, have built bridges outside of their corporate limits, over which they have no police control; therefore an emergency exists, and this act shall be in force from and after its passage.

APPROVED May 5th, 1879.



## CONSTRUCTION OF BRIDGES OVER NAVIGABLE RIVERS.

## § 1. Construction of bridges—State assent.

*AN ACT giving the assent of the State of Illinois to the construction of bridges across navigable rivers in this State, and upon the boundaries thereof.*

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That* the assent of the State of Illinois is hereby given to any corporation or association organized under the laws of this State and subject thereto, to construct bridges across navigable rivers in this State, and upon the boundaries thereof, whenever authorized by the congress of the United States, under such conditions and restrictions as the congress may impose.

APPROVED April 4th, 1872.

## CHANGE OF ORGANIZATION.

*AN ACT to authorize counties changing from township organization to county organization, to assess a poll tax, road labor and road tax at any meeting of the county commissioners during the first year after such change.*

SECTION 1. [CHANGE TO COUNTY ORGANIZATION—ASSESSMENT—POLL TAX.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That* counties changing from township organization to county organization, be and the same are hereby authorized to assess a poll tax, road labor and road tax, for the year, at any meeting during the first year after such change is made.

§ 2. WHEREAS, There is no law now in force allowing counties having made such change to assess a poll tax, road labor, and road tax before September, therefore, an emergency exists, and this act shall be in force from and after its passage.

APPROVED May 28th, 1879.

## CANADA THISTLES.

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| § 1. Commissioner of Canada thistles.                     | § 6. Report of commissioner.                 |
| § 2. Duties of commissioner.                              | § 7. Accounts audited.                       |
| § 3. Treatment of thistles on inclosed lands—appeal, etc. | § 8. Appropriations—control by county board. |
| § 4. Further treatment.                                   | § 9. Emergency.                              |
| § 5. Commissioner to prosecute.                           |  |

*AN ACT concerning Canada Thistles.*

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That* there may be appointed by the

board of town auditors in counties under township organization, and by the county commissioners in counties not under township organization, for each township or election precinct, and by the city council of any city, or by the president and trustees of any town or village, as the case may be, some competent person to be styled "Commissioner of Canada Thistles," who shall take the oath required of township or precinct officers, and shall hold his office for the term of three years, and until his successor is appointed and qualified; and he shall receive for his compensation the sum of two dollars a day for each full day necessarily spent in the performance of his duty, to be verified by affidavit. The board of appointment may, at any time, for good cause remove the "commissioner" from office, and appoint his successor to serve the remaining portion of his time.

§ 2. The "Commissioner of Canada Thistles" shall diligently inquire concerning the introduction and existence of Canada thistles in his township or precinct, and if any are found growing therein, he shall take charge of all such growing in the highway and on uninclosed lands and take care, that they do not go to seed, or otherwise spread, and he shall carefully seek and learn, so far as practicable, the best methods for their destruction, and he shall persistently apply in proper time, such remedy or treatment as he shall deem best calculated to prevent their spread, and to eradicate the same.

§ 3. In case said thistles are found growing on inclosed lands, the commissioner shall advise with the owner, agent, or occupant on their treatment, and if the commissioner shall deem it necessary and expedient for him to fully control the same, he shall agree with the owner, agent or occupant, on the boundaries of the tract so infected, which it is expedient for him to control, and he shall mark the same by stakes, or by fence, if thought best, and thereafter such infected tract, or so much as from time to time remains infected, shall be managed and controlled by the said commissioner, for the purpose of destroying the said thistles, and so long as it may be necessary to complete the work. In case the commissioner and the owner, agent, or occupant of the land cannot agree as regards the propriety of the commissioner controlling such tract, or of the boundaries of the same, then the commissioner shall proceed to stake out or mark such boundaries as he deems proper, and file a copy of his decision with the town clerk, or in counties not under township organization, with the county clerk. The owner, agent or occupant, of the land may if he feel aggrieved, appeal from such decision of the commissioner without bonds; within twenty days, to the commissioners of highways of the town, or to the county commissioners, as the case may be, who shall proceed to view the same, and to hear the reasons for and against the decision of the commissioner, and a majority of such board of appeal shall decide as to the propriety of taking possession of the tract alleged to be infected, and if they decide to take such possession, what shall constitute the boundaries of the same, and shall direct said commissioner to exterminate said thistles (which are hereby declared a public nuisance), without unnecessarily depriving the owner of the land of any legitimate use and enjoyment of the same.

§ 4. The commissioner shall apply the best known means, and use the utmost diligence in eradicating the thistles, but he shall not have power to expend in work or materials more than one hundred dollars on any one infected tract, without the advice and consent in writing, of the supervisor of the town, or of the county commissioners, as the case may be.

§ 5. It shall be the duty of the commissioner to prosecute or complain to the proper authorities of any person or corporation who may violate any law now existing or which may hereafter be passed on the subject of Canada thistles.

§ 6. The commissioner shall annually before the first day of November, make a written report to the supervisor of the town or to the county commissioners, as the case may be, which report shall be filed with the town clerk, or, in counties not under township organization, with the county clerk. The report made to the supervisor shall be publicly read at the annual town meeting. Said report shall state—

*First*—Whether there are or not, any Canada thistles, growing in the town or precinct.

*Second*—If any are growing, where and how many, and when and how introduced.

*Third*—A detailed statement of his treatment of each infected tract, with cost and result.

*Fourth*—He shall report such other matters as may be required of him by the board of town auditors, or by the county commissioners.

*Fifth*—He shall state his views on their further treatment, and make such suggestions and recommendations as he may deem proper and useful, and he shall also forward a copy of said report to the secretary of the State Board of Agriculture, who shall collate and report the same to the Governor by the first day of December of each year.

§ 7. The board of town auditors and the county commissioners in counties not under township organization, shall audit the accounts of the commissioner both for his services, and for the money expended, or labor employed by him, and they shall provide for their payment as they now do for other town or county expenses.

§ 8. The boards of supervisors and county commissioners may make appropriations from the county treasury to aid in destroying the Canada thistle in any one or more towns or precincts of the county, and in case they deem it expedient, they may assume control over any one tract, or of all the Canada thistles in the county, and make such provisions as they may deem necessary, and impose penalties, not exceeding one hundred dollars for each offense, for a violation of any provisions, by-laws, or regulations, made by them on this subject, to be sued for by the commissioners, in the name and for the use of the proper county, before any justice of the peace having jurisdiction. Whenever the board of supervisors or county commissioners shall de-



cide to assume control, and so long as they exercise it, their jurisdiction shall be superior to that of the commissioner.

§ 9. WHEREAS, Canada thistles are now growing in various parts of the State, requiring attention before the first day of July, therefore this act shall take effect and be in force from and after its passage.

APPROVED March 15th, 1872.

STATE OF ILLINOIS,  
EXECUTIVE DEPARTMENT. } ss.

OFFICE OF SECRETARY OF STATE.

I, George H. Harlow, Secretary of State of the State of Illinois, do hereby certify that the foregoing pages contain true and correct copies of the acts of the General Assemblys, of the State of Illinois as enacted and amended and now in force and effect relating to roads and bridges in counties under township organization, and relating to duties of the officers thereof and also the acts of the 31st General Assembly relating to drainage and to drainage and levees for agricultural and other purposes, now in force and effect. All of said acts being now on file in this office.

In witness whereof I have hereunto set my hand and affixed the Great Seal of State, this 1st day of July, A. D. 1879.

[SEAL.]

GEO. H. HARLOW,  
*Secretary of State.*









